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# CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: TORTURE AND DETENTION

## Opinions adopted by the Working Group on Arbitrary Detention

The present document contains the opinions adopted by the Working Group on Arbitrary Detention at its twenty-ninth, thirtieth and thirty-first sessions, held in November/December 2000, May 2001 and September 2001, respectively. A table listing all the opinions adopted by the Working Group and statistical data concerning these opinions are included in the report of the Working Group to the Commission on Human Rights at its fifty-eighth session (E/CN.4/2002/77).

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**OPINION No. 29/2000 (PERU)**

Communication addressed to the Government on 13 October 1999

Concerning Edilberto Aguilar Mercedes

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work the Working Group forwarded the above-mentioned communication to the Government.

2. The Working Group regrets that the Government did not reply within the 90-day time limit.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to the communication, Edilberto Aguilar Mercedes was arrested without a warrant on 1 March 1993 in Machacuay and accused of belonging to the Shining Path terrorist group. When he made his statement to the police, at which time he had no defence counsel, he denied belonging to the group and indicated that, in fact, he repudiated it because it was responsible for the death of three of his uncles and it kept threatening his father.

6. On 10 March 1993, he was brought to trial for the offence of terrorism and, on 21 November 1994, a special "anonymous" division of the Lambayeque High Court of Justice sentenced him to 20 years' imprisonment without properly evaluating what went on during the trial. The sentence was upheld by the Supreme Court on 25 August 1995.

7. According to the source, not only was there no warrant for his arrest, but he was also not allowed to apply to a court for an effective remedy concerning the lawfulness of his detention because the anti-terrorist legislation stated that habeas corpus was not applicable. In addition, he was tried by courts composed of "faceless" judges, contrary to the principle of independent and impartial courts.

8. According to the information, the exculpatory evidence was not evaluated by the judges. The secret court which tried him attached full importance to statements by terrorists requesting the benefit of the Repentance Act, even though the statements were insufficient and contradictory and there was no evidence to corroborate them, contrary to the provisions on presumption of innocence contained in article 14, paragraph 2, of the Covenant.

9. On the basis of the allegations, which have not been refuted by the Government, the Working Group considers that Edilberto Aguilar Mercedes was tried unfairly, without being allowed access to a proper defence and without having his statement taken into account, and that, notwithstanding evidence produced during the trial, it was conducted by "faceless" judges, without any guarantee of independence or impartiality.

10. In its report on its mission to Peru (E/CN.4/1999/63/Add.2), the Working Group gave a detailed analysis of the operation of the faceless civilian and the military courts which handed down their decisions following trials conducted in secret with minimum guarantees of the rights of defence until October 1997. In the Working Group's opinion, such trials are an infringement of due process of such gravity as to confer on the deprivation of liberty an arbitrary character, in accordance with category III of its methods of work. Mr. Aguilar Mercedes' trial took place prior to the abrogation of the anti-terrorist legislation which entered into force in October 1997.

11. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Edilberto Aguilar Mercedes is arbitrary, since it is contrary to articles 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

12. Having rendered this opinion, the Working Group requests the Government to take the necessary steps to remedy the situation, in conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 27 November 2000

**OPINION No. 30/2000 (PEOPLE'S REPUBLIC OF CHINA)**

Communication addressed to the Government on 22 March 2000

Concerning Rebiya Kadeer (Abikim Abdiriyim)

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work the Working Group forwarded the above-mentioned communication to the Government.

2. The Working Group regrets that the Government has not replied within the 90-day deadline.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to the communication, in the morning of 11 August 1999, Ms. Rebiya Kadeer, a businesswoman in Xinjiang Uighur Autonomous Region, was arrested in front of the Yingdu Hotel in Urumqi, capital of Xinjiang Province, where she had gone to meet with a group of visiting staff members of the United States Congressional Research Service. The next morning at 1.30 a.m. two of her sons, Ablikim Abdiryim and Alim Abdiryim, were also detained in Urumqi. Her secretary, Kahriman Abdukirim, was also apprehended. All those arrested in the

context of the case were released on 14 August 1999, with the exception of Rebiya Kadeer and Ablikim Abdiryim. Ms. Kadeer reportedly was briefly held initially at Tianshan Regional Jail before being transferred to Liudaowan Prison in Urumqi. She is reported to be in poor health as a result of her detention.

6. The source points out that Ms. Kadeer is married to a United States resident and former Chinese political prisoner, Mr. Sidik Rouzi, who has criticized the treatment, by the Chinese authorities, of the Uighus, the majority Muslim ethnic group in Xinjiang Uighur Autonomous Province. He has done so through Radio Free Asia since 1996, when he obtained asylum in the United States.

7. In September 1999, Ms. Kadeer was charged with "providing secret information to foreigners" and her case was reportedly referred to Beijing before she was indicted on 21 February 2000 under article 111 of the Chinese Criminal Code. Her son Ablikim Abdiryim reportedly faced similar charges. It is reported that upon her arrest, Ms. Kadeer was found in possession of pieces of paper written in English. While Ms. Kadeer speaks no English, this paper was a translation of the message about her situation that she was supposed to give to the group she was about to meet.

8. On Thursday, 9 March 2000, Ms. Kadeer was tried before the Intermediate People's Court in Urumqi. According to the source, the trial was held in camera on the morning of 9 March. Although it is reported that she was legally represented, no member of her family was allowed to attend the trial, and none of the nine people present in the court room was of Uighur origin. After a two-hour audience and trial, Ms. Kadeer was sentenced to eight years' imprisonment for providing allegedly classified information to foreigners. The source contends that Ms. Kadeer's sentence must be interpreted as punishment for her husband's public criticism of the Government. Ablikim Abdiryim and Kahriman Abdukirim were allegedly sentenced separately, without trial, to terms of re-education through labour of two and three years, respectively.

9. In the light of the allegations, which have not been denied by the Government although it had the opportunity to do so, the Working Group finds that Ms. Rebiya Kadeer was detained and subsequently convicted solely on the grounds that she had tried to tell others of the insecure situation in which she found herself, whereas in doing so she was merely exercising her right to freedom of expression. Similarly, there is reason to believe that both Ms. Kadeer's conviction and the related convictions of her son, Ablikim Abdiryim, and her secretary, Kahriman Abdukirim, with no legal justification or trial, represent punishment and reprisals for the political opinions expressed by Ms. Kadeer's husband, who has been granted asylum in the United States.

10. The Working Group has already expressed its opinion to the effect that the characterization of allegations of human rights violations as State secrets (OP No. 19/1999 (People's Republic of China)) infringes not only international human rights standards, as many procedures established by the Economic and Social Council and the Commission on Human Rights encourage and legitimize the collection of such information, but also articles 5 and 6 of the Universal Declaration of Human Rights.

11. The offence with which Ms. Kadeer was charged, i.e. any information which she might provide, is under the protection of article 19 of the Universal Declaration of Human Rights, which states that the right to freedom of expression "includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers", and since its dissemination, even outside the territory, is guaranteed by that article, such an initiative cannot constitute an offence and cannot therefore be punished.

12. The Government has not denied that the sentencing to labour re-education of Ms. Kadeer's son, Ablikim Abdiryim, and her secretary, Kahriman Abdukirim, was clearly related to her conviction, which indicates that they were not convicted for an ordinary offence. The Working Group notes that, when it visited the People's Republic of China, the Government informed it (see report of the Working Group to the Commission on Human Rights, E/CN.4/1998/44/Add.2, para. 94) that the measure of re-education through labour was only applied to those who had committed minor offences under the common law and who were not required to be formally prosecuted.

13. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Rebiya Kadeer is arbitrary, as being in contravention of articles 9 and 19 of the Universal Declaration of Human Rights, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

14. Consequent upon the opinion rendered, the Working Group requests the Government:

(i) To take the necessary steps to remedy the situation and bring it in conformity with the standards and principles set forth in the Universal Declaration of Human Rights;

(ii) To take the necessary measures to bring its legislation into line with international standards and principles and to accelerate the process of ratification of the International Covenant on Civil and Political Rights, which the Government has signed.

Adopted on 27 November 2000

## OPINION No. 31/2000 (ISRAEL)

Communication addressed to the Government on 13 April 2000

Concerning Mustafa Dirani

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work the Working Group forwarded the above-mentioned communication to the Government.

2. The Working Group regrets that the Government has not replied within the 90-day deadline.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. Mustafa Dirani, a Lebanese citizen aged 48, was abducted from his home in the town of Kasser Naba on 20 May 1994 by a commando of the Israeli security services. According to the source, he headed, at the time of his abduction a small pro-Iranian militia, the Believers' Resistance. It is claimed that he was abducted in an attempt to win the release of Ron Arad, an Israeli air force navigator captured by the Shiite Muslim Amal militia in Lebanon in 1986. Mr. Dirani was security chief of Amal at that time.

6. According to his family, Mr. Dirani has been kept in solitary confinement in an Israeli prison since his abduction. He has been denied the right to see his family or even to send or receive letters from them. The International Committee of the Red Cross and any other international humanitarian organization are said to have been denied access to him to check on his condition.

7. On 13 March 2000, Mr. Dirani's Israeli lawyer filed a suit for compensation and damages on Mr. Dirani's behalf against the Government of Israel, alleging that his client had been raped and tortured in detention to extract information from him about the whereabouts of Mr. Arad. According to the lawyer, Mr. Dirani was beaten, violently shaken, raped by a soldier brought in specifically for this purpose, sodomized by the head of the interrogation team, deprived of sleep and at one point forced to wear diapers after being fed laxatives.

8. According to the source, the delay in filing the compensation suit against the Government resulted from the incommunicado nature of Mr. Dirani's detention and his reluctance to talk about the events, for fear of reprisals. It is alleged that he was only allowed legal representation in the autumn of 1998, almost four and a half years after his abduction.

9. As it has received no response from the Government of Israel, the Working Group will render an opinion on the basis of the information available to it.

10. It is clear to the Working Group from the allegations that Mr. Dirani was abducted and held incommunicado for more than six years solely so that he could be used to obtain information that might help locate, or even be exchanged for, an Israeli soldier captured in 1986, unjustifiable acts that render his detention devoid of any legal basis.

11. Apart from the conditions of his detention and the treatment he was subjected to during that time, which was the subject of an urgent appeal by the Special Rapporteur of the Commission on Human Rights on the question of torture earlier this year, the Working Group notes that Mr. Dirani also did not obtain any legal assistance during the first four and a half years of his detention, during which time he was denied a fair trial or any remedy, which constitutes a breach of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and reaffirms the arbitrary nature of his detention.

12. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Mustafa Dirani is arbitrary, as being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights and falls within category I of the categories applicable to the consideration of cases submitted to the Working Group.

13. Having rendered this opinion, the Working Group requests the Government to take the necessary steps to remedy the situation of Mustafa Dirani, in accordance with the standards and principles set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, to which it is a party.

Adopted on 27 November 2000

## OPINION No. 32/2000 (UZBEKISTAN)

Communication addressed to the Government on 8 March 2000

Concerning Makhbuba Kasymova

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work the Working Group forwarded the above-mentioned communication to the working Government.

2. The Working Group regrets that the Government has not replied despite the extension of the 90-day grace period it had requested and obtained from the Working Group.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of proceedings or a sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of international standards relating to a fair trial, as set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group would like to have received the cooperation of the Government. In the absence of any information emanating from the Government, the Working Group considers that it is in a position to render an opinion on the facts and circumstances of the case, all the more so since the facts and allegations contained in the communication have not been disputed by the Government.

5. According to the source, on 12 May 1999, a group of plainclothes officers of the Yununsobad district of the Tashkent City Police entered the flat of Ms. Makhbuba Kasymova, a human rights defender, and searched it although she was not there at the time. Ms. Kasymova is one of a small group of human rights defenders who monitored the wave of arrest and trials

which followed a series of bomb explosions in Tashkent in February 1999 and the murders of officials in the Fergana valley in late 1997. The officers questioned her husband, two of her daughters and one Ravshan Khamidov who was staying in the flat. The latter was detained after a hand grenade and a small quantity of drugs were allegedly found. No warrant was shown, nor did the officers reveal their identity, as required under the law.

6. In the days following the search of her home, Ms. Kasymova was repeatedly questioned in the City Internal Affairs Department (GUVD). On several occasions, the interrogations lasted for many hours without a break and ended late at night. On 19 May 1999, she was taken under guard directly from the office of the GUVD to the assembly hall of her local neighbourhood council (*mahallya*), where some 200 people had gathered to denounce her publicly, it is reported that Ms. Kasymova was pointed out to them as "one of the sort of people who killed your sons". Excerpts of this meeting were allegedly shown on national television and Ms. Kasymova and her (unregistered) Independent Human Rights Organization of Uzbekistan (NOPCHU) were presented as being supporters of terrorism.

7. Shortly after this "show trial", Ms. Kasymova was formally charged with concealing a crime. She remained at liberty, on bail. In early June 1999, while the criminal investigation was still under way, an additional charge of misappropriation of money was brought against Ms. Kasymova. It remains unclear from the court documents whether this related to a loan arrangement between Ms. Kasymova and one of her neighbours, or to a sum of money handed over by the same neighbour, or to a sum of money handed over by the same neighbour for the legal defence of an imprisoned relative.

8. On 13 July 1999, Ms. Kasymova attended Yunusobad District Court. She had not been informed that her trial was imminent and thus had not yet engaged a lawyer; however, she brought with her to the court building the Human Rights Watch representative in Uzbekistan. The trial against Ms. Kasymova began forthwith, without prior notice, in the absence of any defence witness and with a lawyer assigned by the court. Three hours later, the proceedings concluded with the handing down of a five-year sentence for concealment of a crime and for misappropriation of funds (four years under article 241 and three years under article 168 of the Uzbek Criminal Code). Ms. Kasymova was immediately transferred to Tashkent City Prison.

9. On 17 August 1999, the Tashkent City Court heard Ms. Kasymova's appeal against her conviction and sentence. The appeal ground advanced by her lawyer was that no evidence had been adduced that any crime had occurred. After 14 minutes, the appeal was dismissed. Ms. Kasymova's lawyer has indicated that he intends to appeal to the Supreme Court. Ms. Kasymova is currently held in a corrective labour colony for women in Tashkent. She allegedly suffers from a heart condition.

10. On the basis of the allegations made, which the Government has not denied although it has been given the opportunity to do so, the Working Group notes that the conviction and detention of Ms. M. Kasymova were motivated exclusively by her human rights activities, whereas in acting as she did she was only peacefully exercising the right to freedom of expression, as guaranteed by article 19 of the Universal Declaration of Human Rights and by article 19 of the International Covenant on Civil and Political Rights.

11. In view of the above, the Working Group is of the opinion that an analysis of the irregularities of the legal proceedings preceding Ms. Kasymova's final conviction is unnecessary, although the source sees those proceedings as violations of international norms, notably articles 9 and 14 of the Covenant.

12. In the light of the foregoing, the Working Group renders the following opinion:

Makhbuba Kasymova's deprivation of liberty is arbitrary in that it contravenes the provisions of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, and falls within category II of the categories applicable to the consideration of cases before the Working Group.

Adopted on 27 November 2000

## OPINION No. 33/2000 (SYRIAN ARAB REPUBLIC)

Communication addressed to the Government on 1 February 2000

Concerning Veyzi Özgür (alias Bengin Ahmed Kamis)

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category (i));

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category (ii));

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category (iii)).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. It has transmitted the Government's reply to the source, which has given its comments upon it. The Working Group believes that it is in a position to render an opinion on the acts and circumstances of the case, in the context of the allegations made, the response of the Government thereto and the comments by the source.

5. According to the source, Mr. Veyzi Özgür (now known under the name Bengin Ahmed Kamis) is a Turkish citizen. After accidentally stepping on a landmine in northern Iraq on an unspecified date in the mid-1990s and losing part of his left leg, he crossed the border to Syria to live in the small town of Amude, in an area inhabited predominantly by ethnic Kurds.

6. In October or November 1996, Mr. Özgür was involved in a motorcycle accident caused by an acquaintance. Only Mr. Özgür was injured. Local residents brought him to a nearby hospital and informed the local police. Upon regaining consciousness, Mr. Özgür told police officers that he was a Kurd of Turkish origin. He had no identity papers. He was immediately arrested and transferred to the prison of Adra in Damascus.

7. The source indicates that since his arrest, Mr. Özgür has not been charged with any recognizable criminal offence, indicted or been brought before a judge or judicial officer. He is said not to have been engaged in any criminal activities prior to his arrest, and the source adds that at the time of his arrest the police were unable to record any evidence of criminal activity. His brother, a resident in Germany, has only been able to visit him twice, for an extremely limited time and always in the presence of armed security guards. His brother has allegedly been prevented from leaving him money to pay for his legal representation, as a result, it is said, Mr. Özgür has no access to legal representation.

8. The Government has informed the Working Group that Mr. Bengin Ahmed Kamis (Veyzi Özgür), together with four others, was brought before a court for having committed the offence of causing bodily injury to citizen Ahmed Abdul Rahman Ayu of the Syrian village, Soujaq Sadoun. The Government does not specify the court, the nature of the procedure, the time when the event allegedly took place, the time of the court appearance or the legal position of Mr. Özgür and the four other persons mentioned. It does not even confirm the fact that Mr. Özgür has been deprived of his liberty. It does not make any reference to the legal provisions under which Mr. Özgür could be prosecuted or detained.

9. According to the information submitted by the source, between May 1999 and 13 January 2000 Mr. Özgür's relatives made four short visits to the Adra prison in Damascus. According to the testimony of these relatives (the brother, mother and sister of Mr. Özgür), he has never been charged or sentenced and his state of health is deteriorating.

10. In the light of the source's allegations and the reply by the Government, which has not refuted these allegations, the Working Group is of the opinion that the right to a fair trial guaranteed by articles 9 and 10 of the Universal Declaration and articles 9 and 14 of the Covenant has not been respected in the case.

11. The Working Group considers that Veyzi Özgür (alias Bengin Ahmed Kamis) has been in prison for four years without a warrant having been issued for his arrest or a decision having been taken by a competent authority justifying the deprivation of his liberty. He is being held without charge or sentence in the Adra prison at Damascus. He is deprived of the assistance of a lawyer. The violation of articles 9 and 10 of the Universal Declaration, of articles 9 and 14 of the International Covenant on Civil and Political Rights, and of principles 10, 11, 12, 13, 16, 17, 18, 35, 36, 37, 38 and 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (adopted by the General Assembly on 9 December 1988) is of such gravity as to confer on the deprivation of liberty suffered by Veyzi Özgür an arbitrary character.

12. In the light of the above, the Working Group renders the following opinion:

> The deprivation of liberty suffered by Veyzi Özgür is arbitrary in that it is contrary to articles 9 and 10 of the Universal Declaration of Human Rights, articles 9 and 14 of the International Covenant on Civil and Political Rights and principles 35 to 39 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, and falls within category (iii) of the principles applicable to the consideration of cases submitted to the Group.

13. Consequently, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Veyzi Özgür and to bring it into line with the provisions of the International Covenant on Civil and Political Rights, to which the Syrian Arab Republic is a party.

Adopted on 27 November 2000

## OPINION No. 34/2000 (UNITED STATES OF AMERICA*)

Communication addressed to the Government on 19 November 1999

Concerning Jan Borek

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by the Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.

2. The Working Group conveys its appreciation to the Government for having provided the requisite information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source and received its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto, as well as the observations by the source.

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* Mr. Petr Uhl did not participate in the deliberations on or the adoption of this Opinion.

5. According to the source, Jan Borek, a Czech citizen, was arrested on 10 October 1991, reportedly indicted for first degree murder in October 1991 and incarcerated in the Michigan Department of Corrections. Finally, he pled guilty to the substituted charge of second degree murder and was sentenced, on 3 December 1992, to 5 to 25' years imprisonment, with 466 days credited for the time already served. According to his own calculations, he was therefore eligible for release in 2 years and 10 months from the time of his conviction.

6. Mr. Borek has reportedly been through the parole review process three times. Each time, he has apparently received a 24-month continuation. No reasons were apparently given.

7. The first parole review reportedly took place in July 1995. Apparently, at the review, the interviewing member recognized Mr. Borek's outstanding institutional record and said that she would grant him parole. However, he reportedly received a 24-month continuation a few weeks later.

8. The second parole interview was scheduled to take place in July 1997. Reportedly, Mr. Borek received a phone call at 3 p.m. on 24 July 1997 from a detective responsible for his case who told him that he had an excellent chance of being granted parole, but that Mr. Borek first had to speak with him. The detective apparently threatened that if he did not talk with him, he would make sure that Mr. Borek was not paroled. Mr. Borek reportedly told him that he had no further information to give in addition to what he had told the judge in open court. In October 1997, his second parole hearing was reportedly held. On 17 December 1997, Mr. Borek reportedly received a second 24-month continuation. He appealed this decision and his appeal was turned down. He has appealed to the Michigan Court of Appeals, but his case has not yet been heard.

9. A third parole hearing has reportedly taken place. A few weeks after the third parole hearing, Mr. Borek received a third 24-month continuation despite the apparently favourable vote of the interviewing parole board member.

10. It is alleged that the detention of Jan Borek is arbitrary, since he has been granted three 24-month continuations despite being told by interviewing parole board members at three separate parole hearings that he would be granted parole.

11. In the light of the allegations submitted by the source and the Government's response to the transmittal of the allegations to it, the murder which led to the arrest of Jan Borek was reportedly committed in the following circumstances. The son of a first marriage, Jan Borek followed his mother to the United States, where she married Gustav Prilepok. Relations between the spouses apparently degenerated rapidly, in particular because of the violent behaviour of the husband towards his wife and his stepson. The situation became so serious that the mother, Jana Prilepok, decided to flee with her son and return to Czechoslovakia. On 7 February 1991, during a violent argument on that subject, Gustav Prilepok apparently tried to stab Jan Borek, who managed to seize the weapon and allegedly fatally wounded his aggressor. In his initial statements, Borek claimed that he then panicked and transported the body in the back of his truck to some woods, where he buried it.

12. A few months later, overcome with remorse, he turned himself in to the police and was placed in custody on 10 October 1991. His mother was also placed in custody as an accessory after the fact.

13. The searches conducted during the investigation to locate the weapon and the body were fruitless. It has not been denied that Jan Borek cooperated with the investigation. Jan Borek has always maintained that since he had not been in the United States for long and was not familiar with the region, he was unable to locate the body or the place where the weapon had been abandoned.

14. Therefore, and in view of the fact that he had turned himself in, when Mr. Borek appeared before the Oakland County Circuit Court on 13 October 1992, the prosecutor proposed the following plea bargain, in agreement with Mr. Borek's lawyer and the judge. The initial charge of first degree murder (the sentence for which is between 50 years' and life imprisonment) would be reduced to second degree murder (the sentence for which is between 5 and 25 years). The Michigan Parole Board could grant Mr. Borek parole for good conduct after he had served five years of the sentence. As has been indicated, the judge credited the time already served, making Mr. Borek eligible for parole after 2 years and 10 months.

15. Mr. Borek was brought before the Michigan Parole Board first in July 1995, then in July 1997 and again in July 1999. At each session, as is confirmed by the Government in its response, the Parole Board decided to continue detention for a further 24 months on the following grounds:

> The offence had been planned and carried out in a secretive manner;
>
> The body of the victim had been and remains hidden;
>
> Mr. Borek has continuously minimized his criminal behaviour;
>
> Mr. Borek has shown no remorse;
>
> Mr. Borek remains a risk to public safety.

The Government adds that the decision to grant a prisoner parole is taken solely on the discretionary authority of the Parole Board.

16. The Government further indicates, and the source does not deny, that on 5 December 1997 a second decision denying parole was appealed, in compliance with the provisions of Michigan legislation, to the Oakland County Circuit Court, which confirmed the decision. A further appeal to the Michigan Court of Appeals was still pending on the date of the Government's reply (19 January 2000), i.e. almost two years and one month after the Parole Board's decision to deny parole.

17. Furthermore, with a view to favouring a decision to grant parole, the Government of the Czech Republic has on several occasions informed the Michigan authorities that, should Mr. Borek be granted parole, it would approve his transfer to the country of his birth, as in the eyes of the Czech authorities Mr. Borek was neither a risk to public safety nor a menace to Czech society.

18. In the light of the above, the Working Group observes that the explanation given by the Michigan Parole Board contrasts with the appraisals of the penal authorities, as certified in numerous documents whose trustworthiness is beyond doubt (official, signed and notarized attestations), namely:

Attestations and declarations established by the prison management (some of them for the Parole Board) concerning Mr. Borek's excellent conduct in prison since 1993 and emphasizing that he had never been the object of disciplinary citations and that he performed the teaching duties assigned to him within the prison most ably;

Certificates proving that Mr. Borek has obtained several degrees by correspondence (Bachelor in Science and Business Administration from the Indiana Institute of Technology, and Associate in Science and Associate in Arts from Pennsylvania University);

A letter from the Consul of the Czech Republic to the Chairman of the Working Group dated 20 March 2000, confirming Mr. Borek's good conduct in the following terms:

"According to the head of the staff of Ionia Prison he is considered to be among the best prisoners in the whole history of the Ionia Maximum Facility. Beside his exceptional behaviour, reaching 12 points on a scale of 12, he studied, served as a deputy on the prisoners' council and is teaching more than two hundred inmates how to read and count. Despite his outstanding record, the Parole Board has already three times rejected his request for parole, noting in vague terms that, he remains a threat to society."

An affidavit dated 3 September 1999 in which the Consul of the Czech Republic in the United States, Mr. Petr Hrubec, states that he was permitted to attend Mr. Borek's third Parole Board hearing on 2 August 1999 and that he observed that:

"At the end of the parole hearing the interviewer stated that she was alerted to the fact that there was some kind of note in Mr. Borek's file. The first Parole Board member, who had screened Mr. Borek's file prior to the interview, deferred his vote due to the contents of the note. The interviewing Parole Board member stated that as a result of this interview she intended to vote for parole, but she wanted to first see the note. Consequently, the interviewing member also deferred her final vote until the time when she had the opportunity to read the note and review the case with another Parole Board member. At the time of the interview, Mr. Borek was neither aware about the existence of the note in his Lansing file, nor was he given the opportunity to dispute its contents prior to or during the parole interview."

Another letter to the Chairman of the Working Group, in which the new Consul of the Czech Republic, Mr. Richard Krpac, recalls that, according to the provisions of the Vienna Convention on Consular Relations and the bilateral consular agreement between the United States of America and the Czech Republic, the Consul should have been informed of Mr. Borek's detention from the outset. Instead, Mr. Borek was deprived of consular assistance between 1991 and 1996. As a result, according to the Consul,

> "Mr. Borek, being a foreigner with a poor knowledge of the country and language, was denied access to consular help during the crucial stages of investigations and court trials which later determined his sentence."

19. In view of the above, the Working Group is of the opinion that the following should be taken into account in considering whether or not Mr. Borek's detention since the end of his fifth year of imprisonment is arbitrary.

20. The reduced sentence for second degree murder, the result of a plea bargain, varying between a minimum of 5 years and a maximum of 25 years, gives the Parole Board, an administrative body, vast discretionary powers to determine the extent of the actual sentence required to be served by Jan Borek. Such a procedure allows too much room for uncertainty. Absence of legal representation of the convict before the Parole Board, the subjective nature of its proceedings, reliance by the Board on material and, in the present case, the existence of a note, the contents of which are not required to be disclosed, and the finality of the decisions of the Parole Board, are all characteristics which render the discretionary procedure of the Parole Board suspect and subject to the charge of unreasonableness for its lack of transparency.

21. Principle 4 of the Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment states, "Any form of detention and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority". The local law applicable in the case of Borek only entitles the appellate court to direct the Parole Board to re-examine the case. The court cannot order that the prisoner be granted parole or change the scope of the decision appealed. What is required is an effective alternative remedy which would entitle the appellate authority to consider on their merits the decisions of the Parole Board, especially when the said Board is vested with vast discretionary powers, as already referred to.

22. In addition, principle 16, paragraph 2, of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that if a detained or imprisoned person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national. This guarantee was disregarded for five years.

23. The Working Group notes that, despite by the interviewing Parole Board members stating three different parole hearings, that Mr. Borek was likely to be granted parole in the light of his excellent conduct in prison since 1993 and positive aspects of his accomplishments while in prison, the Parole Board directed that there should be three 24-month continuations of his sentence. On being sentenced after a plea bargain, Mr. Borek was entitled to be considered for

parole after having served his minimum five-year sentence. The relevant criteria must necessarily relate to Borek's conduct while serving his sentence. The Working Group notes that, in fact, the Board, in rejecting parole, based itself primarily on factors unrelated to Mr. Borek's conduct, such as the fact that the victim's body had never been recovered, a matter already considered during the trial. These considerations, coupled with other elements relating to the rejection of parole, as set above, would cumulatively confer on the deprivation of liberty an arbitrary character, falling within category III of the Working Group's methods of work.

24. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of the liberty of Jan Borek beyond the date on which he had served five years of his sentence is arbitrary, as being in contravention of articles 9, 10 and 19 of the Universal Declaration of Human Rights, articles 2, 9 and 14 of the International Covenant on Civil and Political Rights and Principle 16, paragraph 2, of the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

25. Consequently, the Working Group requests the Government to take measures necessary to remedy the situation, including an examination of the possibility of the State of Michigan modifying its legislation governing parole, so as to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 27 November 2000

## OPINION No. 35/2000 (PEOPLE'S REPUBLIC OF CHINA)

Communication addressed to the Government on 2 February 2000.

Concerning Yuhui Zhang

The State has signed but not ratified the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by the Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source and received its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. It would be appropriate to set forth succinctly the allegations which have been brought to the attention on the Working Group by the source.

(i) Mr. Zhang Yuhui, a Chinese national aged 35 years, who has resided in Macao for over nine years and owns a cleaning business there, was arrested on 10 November 1999 in Kaiping City, Guangdong Province, People's Republic of China. According to the source, it is unclear whether he was presented with an arrest warrant upon arrest, or whether he has been formally charged and, if so, on the basis of what legislation.

(ii) In early November 1999, Mr. Zhang undertook a business trip to the People's Republic of China with his wife. He was arrested in Kainping City and detained on the ground that he was practising Falun Gong, a traditional spiritual practice with millions of followers in the People's Republic of China and throughout the world. Falun Gong, as an organization, was banned by the Chinese authorities in July 1999.

(iii) The source notes that many Falun Gong practitioners have been detained since July 1999 and sent for re-education through labour without trial, because they refuse to denounce their belief. Other followers have been sentenced to prison terms.

(iv) Yuhui was an active Falun Gong practitioner in Macao. Following the government crackdown on the movement, he wrote numerous articles on Internet web sites to guide readers to think about the Falun Gong issue rationally. His writings were popular among both practitioners and non-practitioners. Yuhui had also written to the Macao office of the Xinhua news agency, voicing opposition to the ban on the movement in July 1999. It is argued that all Yuhui did was lawful and transparent. He himself had told his friends several times that he was in fear of being arrested, as he had been warned by the Xinhua news agency for expressing his beliefs.

(v) The source does not identify the facility in which Mr. Yuhui is currently detained. It notes, however, that the authorities have thus far refused permission to his family to visit him.

6. The nature of the Government's reply makes it difficult for the Working Group to appreciate the conclusions arrived at by the court when it ruled that the defendant had "posed a threat to national and state security". It is apparent from the file that the activities of Mr. Yuhui were peaceful and that he was in no way directly involved in any violent activity. The Working Group believes that article 19 of the Universal Declaration of Human Rights has been violated. It reiterates that everyone has the right to freedom of opinion and expression and that the said right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media, regardless of frontiers. There is nothing to suggest

that Falun Gong uses other than peaceful means to spread what the organization believes in. The Government of the People's Republic of China in its response has stated that Mr. Zhang Yuhui is a native of Kaiping City in Guandong Province. In 1986, after graduation from the University of International Business and Economics in Beijing, he was employed to work with the units of the customs houses in Guangzhou and Lianhuashan. He was thereafter transferred to Macao in January 1990. The Government accepts that he was arrested on 11 November 1999 by the Guangdong Province public security authorities because, since July 1999, he had been engaged in illegal activities and disrupted the social order. According to the Government, Zhang had confessed his error and displayed a willingness to correct it, pursuant to which his punishment was converted to house surveillance. The Government states that the public security authorities, in dealing with Zhang Yuhui, have acted in strict compliance with the People's Republic of China's relevant laws and regulations. The Government also informed the Working Group that Zhang Yuhui was released on 21 December 1999 and claims that Zhang was not arbitrarily detained.

7. Taking into account the response of the Government, the Working Group believes that the reasons for Zhang Yuhui's detention have not been denied. It is not denied by the Government that he wrote numerous articles on Internet web sites relating to Falun Gong. The Government also does not deny that his writings were popular both with practitioners and non-practitioners. Neither does the Government deny that Zhang Yuhui opposed the ban on the Falun Gong movement in July 1999. The reasons given for Zhang Yuhui's detention are propagation of his ideas and beliefs. That he expressed his beliefs and opinions peacefully is not in issue. The Government decision that these activities are illegal and disrupt the social order and therefore justify arrest by the public security authorities cannot be justified since his detention is in direct violation of article 19 of the Universal Declaration of Human Rights.

8. The Working Group, consistent with its practice, would not have rendered an opinion with regard to Zhang Yuhui's detention, on account of his release on 21 December 1999. However, the Working Group believes that the fact that Zhang Yuhui was detained for propagating his ideas and beliefs peacefully is sufficient reason for the Working Group to render an opinion, despite Zhang Yuhui's release from detention.

9. In the circumstances, the Working Group is of the opinion that the detention of Zhang Yuhui from 11 November 1999 to 21 December 1999 was arbitrary and contrary to article 19 of the Universal Declaration of Human Rights, and falls within category II of its methods of work.

10. Consequently, the Working Group requests the Government of the People's Republic of China to take all measures necessary to remedy the situation and, consistent with article 19 of the Universal Declaration of Human Rights, not detain people for the peaceful propagation of their opinions.

Adopted on 27 November 2000

## OPINION No. 36/2000 (PEOPLE'S REPUBLIC OF CHINA)

Communication addressed to the Government on 1 February 2000

Concerning Li Chang, Wang Zhiwen, Ji Liewu and Yao Jie

The State has signed but not ratified the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.

2. The Working Group regrets that the People's Republic of China has not provided its comments on the allegations made by the source.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. The Working Group would have welcomed the cooperation of the Government of the People's Republic of China. On 1 February 2000, the allegations from the source were communicated to the Government. In the absence of a response, the Working Group is left with no alternative except to deal with the allegations and render an opinion in the light thereof.

5. It is appropriate at this stage to refer to the allegations forwarded to the Working Group by the source. These allegations relate to four presumed leaders of the Falun Gong spiritual movement, Li Chang, Wang Zhiwen, Ji Liewu and Yao Jie. They have allegedly been sentenced by the Beijing Intermediate Peoples Court to prison terms of between 7 and 18 years.

(i) The court found them guilty of organizing and using a cult to undermine laws, causing deaths and illegally obtaining and disseminating State secrets. According to the Xinhua news agency, the judges ruled that the four defendants "organized and used the Falun Gong evil cult organization to spread superstition and heresies and deceive people, causing deaths". The trial reportedly was the Government's most significant prosecution since outlawing Falun Gong as a menace to the public and State interests in July 1999.

(ii) The source alleges that for the trial, held on Sunday, 26 December 1999, the authorities cordoned off the courthouse to ensure that Falun Gong members did not stage peaceful protests such as had been held repeatedly in defiance of the Government's ban. Although State media reported that the four defendants had lawyers and that family members attended the proceedings, one relative indicated that each defendant was only allowed one family member in the courtroom. As some of the charges related to theft and dissemination of State secrets, part of the proceedings were held behind closed doors.

(iii) According to the source, in setting out its case through the media, the Government merely displayed its fears about Falun Gong's ability to mobilize large numbers of followers, which was underlined by the fact that all the defendants were party members with good jobs in government and business. According to the Court, Li, Wang, Ji and Yao "set up 39 command posts, more than 1,900 training posts and 280,000 contact posts". They were said to have "plotted and directed" 78 protests, and to have stolen 37 top secret or otherwise classified State secrets and disseminated them or included them in protest letters. Finally, the four were said to have organized "proselytizing sessions and printed group literature illegally netting hundreds of millions of yuans in profits".

(iv) The defendants contended that they had merely engaged in peaceful activities and protests, and defended the tenets of the group.

6. A response from the Government would have enabled the Working Group to appreciate the conclusions arrived at by the court when it ruled that the four defendants had "organized and used the Falun Gong evil cult organization to spread superstition and heresies and deceive people, causing deaths". The alleged role of the defendants in causing deaths could have been better appreciated had evidence for such conduct been furnished to the Working Group. In the absence of hard evidence, it is difficult for the Working Group to accept the conclusions of the court in this regard. The manner in which the courthouse was cordoned off to obstruct peaceful

protests, the allegation that only one member of the family was allowed in the courtroom and the secret nature of the proceedings indicate that the Government dealt with these four defendants merely because they had the ability to mobilize a large number of followers. It is apparent that their activities and protest were peaceful and that they were in no way directly involved in any violent activity. The Working Group believes that article 19 of the Universal Declaration of Human Rights has been violated. The Working Group is of the opinion that everyone has a right to freedom of opinion and expression and that this right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media, regardless of frontiers. There is nothing to suggest that Falun Gong uses other than peaceful means to spread what the organization believes in.

7. In the above circumstances, the Working Group is of the opinion that the detention of Li Chang, Wang Zhiwen, Ji Liewu and Yao Jie is arbitrary, is a direct violation of article 19 of the Universal Declaration of Human Rights and falls within category II of the Working Group's methods of work and that the situation requires to be remedied, since the deprivation of the liberty of Li Chang, Wang Zhiwen, Ji Liewu and Yao Jie is arbitrary and without reasonable cause.

8. Consequently, the Working Group requests the Government of the People's Republic of China to take measures necessary to remedy the situation and, in the light of the opinion of the Working Group, to act consistently with the principles enunciated in article 19 of the Universal Declaration of Human Rights.

Adopted on 27 November 2000

## OPINION No. 37 (2000) MEXICO

Communication addressed to the Government on 11 July 2000

Concerning Jacobo Silva Nogales, Gloria Arenas Agis, Fernando Gatica Chino and Felicitas Padilla Novas

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.

2. The Working Group regrets that the Government did not reply within the 90-day time limit.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to the communication, Jacobo Silva Nogales, a rural schoolteacher and social activist, was arrested without a warrant in Mexico City on 18 October 1999 by the Federal Crime Prevention Police. He spent the first three days of his detention in an unknown place, where he

was severely tortured. He was then transferred to a military base, where he was again tortured on the following days. On 24 October 1999, he was transferred to "Federal Centre for Social Rehabilitation" No. 1 in Amoloya de Juárez, where he remains in detention at the present time.

6. Gloria Arena Agis, a social activist, was arrested on 22 October 1999 in the State of San Luis, Potosí, Mexico, but no warrant was produced. According to the source, she was kept for the first two days of her detention in an unknown place, presumably a military base, where she was severely tortured. She was then transferred to "Federal Centre for Social Rehabilitation" No. 1 in Amoloya de Juárez, where she remains in detention at the present time.

7. According to the source, Fernando Gatica Chino and Felicitas Padilla Navas were arrested on 22 October 1999 in Chilpancingo, State of Guerrero, Mexico by the Federal Crime Prevention Police and the army, but no warrant was produced. The source claims that during the first two days of their detention in an unknown place, presumably a military base, Fernando Gatica Chino was severely tortured and Felicitas Padilla was subjected to psychological torture. On 24 October 1999, they too were transferred to "Federal Centre for Social Rehabilitation" No. 1 in Amoloya de Juárez, where they are still detained at the present time.

8. The source considers the deprivation of the liberty of these persons to be arbitrary because:

(i) The detainees were arrested in a violent manner, without any arrest warrant or court order for the arrests. They were abducted and kept incommunicado, Silva Nogales for five days and Gloria Arenas Agis, Gatica Chino and Felicitas Padilla for two days. They were arrested in different places, the first detainee in Mexico City on 19 October 1999, the second in San Luis, Potosí on 22 October 1999 and the last two in Chilpancingo on 22 October 1999, but the official statement accused them all of the same act, even though the first two were not acquainted with the last two.

(ii) They were denied access to counsel for approximately the first four weeks of their detention.

(iii) The detainees were deprived of the majority of their rights during the trial, which took place in the prison and was described by the Government as a "secret trial not open to the public", although there was no law permitting such a trial in a maximum security prison. Likewise, following the request addressed to the judge by counsel to take the necessary steps to make the hearings public, the judge stated that permission to attend the trial had to be applied for, and permission had to be granted by the prison director. On various occasions before and during the trial, the prisoners were denied the right of access to their counsel and the right to speak with him in private. Similarly, family members and witnesses were denied access to the trial.

(iv) It is also claimed that there were many anomalies in the evidence submitted by the Government, including the falsification of many official statements and of other documents, medical examinations and the so-called "signed confessions" that were obtained by torture.

(v) The arrests were confirmed by the Under-Secretary for Public Security and by the Research Centre for National Security, which specified the charges as membership of the Revolutionary People's Army (ERPI), terrorism, criminal association, rebellion, damage to the property of others, intentional homicide, organized crime, hoarding of arms and possession of cartridges intended for the exclusive use of the armed forces. The source dismisses as untrue the official claim that the four were arrested in Chilpancingo on the same date, 22 October 1999, by the Criminal Investigation Service of the State of Guerrero, while executing a warrant for the arrest of an alleged kidnapper, and that no arrest warrant was needed to arrest the four because they were encountered "in flagrante", with arms, ammunition, uniforms and ERPI propaganda in their homes.

(vi) It is claimed that in the cases described there were violations of articles 5, 9 and 10 of the Universal Declaration of Human Rights and of articles 9 and 14 of the International Covenant on Civil and Political Rights, to which Mexico is a party.

9. The complaints by the source were not denied by the Government, which had the opportunity to do so, within the time limit of three months.

10. The Working Group considers that the arrests of Jacobo Silva Nogales on 19 October 1999 in Mexico City, of Gloria Arenas Agís on 22 October 1999 in San Luis and of Fernando Gatica Chino and Felicitas Padilla on 22 October 1999 in Chilpancingo were not carried out on the basis of an arrest warrant from a competent body or at the time of the commission of an offence.

11. As it has stated on a number of occasions, the Working Group is not able to render an opinion on the innocence or otherwise of a person deprived of liberty. However, it can render an opinion on the arbitrary nature of an arrest in which the principles of due process were not complied with.

12. The Working Group considers that in the case of Silva Nogales, Arena Agís, Gatica Chino and Padilla Navas, the right of the detainees to the presumption of innocence was not respected inasmuch as they were forced to incriminate themselves under torture, nor, during the first four weeks of their detention was the right to be assisted by counsel. Likewise, the trial, which took place in prison and which initially was secret, was not conducted with the safeguards of impartiality. The violation of these principles of due process is so serious as to determine that the deprivation of the liberty of these persons was arbitrary.

13. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of the liberty of Jacobo Silva Nogales, Gloria Arenas Agis, Fernando Gatica Chino and Felicitas Padilla Navas is arbitrary, as constituting a breach of the provisions of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

14. The Working Group, having rendered this opinion, requests the Government to take the necessary steps to remedy the situation in accordance with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 27 November 2000

## OPINION No. 38/2000 (MYANMAR)

Communication addressed to the Government on 20 January 2000

Concerning U Pa Pa Lay

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.

2. The Working Group regrets that the Government has not replied within the 90-day deadline.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. According to the communication, U Pa Pa Lay, a citizen of Myanmar born in 1947 and a comic performer by profession, was arrested at his home in Mandalay, Myanmar, on 7 January 1996 by officers of Military Intelligence Unit No. 16. He was reportedly charged under section 6 of the 1950 Emergency Provisions Act, which provides a seven-year prison sentence and a fine for anyone who instigates or intends to spread false news, knowing that it is untrue. U Pa Pa Lay was first held in Mandalay prison, then reportedly transferred to Kyein Kran labour camp near Myitkyina in April 1996. On an unspecified later date, he was transferred to Mytkyina prison.

5. On 4 January 1996, the forty-eighth anniversary of the independence of Myanmar, 2,000 members of the National League for Democracy (NLD) attended an independence day celebration at the home of its leader Daw Aung San Suu Kyi. The celebration

included a performance by the Anyeint group, a traditional entertainment group. U Pa Pa Lay was a member of this group, also known as Myo Win Mar (Our Own Way). His performance with fellow performer U Lu Zaw reportedly included jokes and songs of a satirical nature, criticizing the authorities. In the evening of 7 January 1996, both men were arrested along with eight other members of the group, who were subsequently released without charges. U Pa Pa Lay and U Lu Zaw were charged under section 6 of the 1950 Emergency Provisions Act with spreading false news and sentenced to seven years in prison on 18 March 1996. According to the source, U Pa Pa Lay was convicted merely because he chose to exercise his right to freedom of expression.

6. It is submitted that the trial of U Pa Pa Lay was conducted at Mandalay prison without any legal representation. According to NLD sources, some party members and their lawyers went to the courtroom to attend the trial, only to find the courtroom closed. A judge and a prosecutor went to Mandalay prison to conduct the trial in the absence of any defence attorney or witnesses. According to the source, U Pa Pa Lay has no possibility to appeal his sentence, which is considered final.

7. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

8. On the basis of the foregoing, the Working Group notes that the detention of U Pa Pa Lay on 18 March 1996 and the sentence of seven years' imprisonment under section 6 of the 1950 Emergency Provisions Act on the spreading of false news are based solely on the grounds that he took part in celebrations organized on 4 January 1996 by the NLD to mark the forty-eighth anniversary of the independence of Myanmar and that, as a member of the Anyeint traditional group, he gave a performance during those celebrations that included jokes and songs of a satirical nature criticizing the authorities. His detention on those grounds is therefore of an arbitrary nature, since he merely acted in accordance with his right to freedom of expression, a right guaranteed by article 19 of the Universal Declaration of Human Rights (category II).

9. This violation is aggravated by the fact that the trial of U Pa Pa Lay was conducted by a judge and a prosecutor at Mandalay prison in the absence of any defence attorney or witnesses. Moreover, U Pa Pa Lay has been unable to appeal since the sentence is deemed final. In the opinion of the Working Group, these are violations of the right to a fair trial (Universal Declaration of Human Rights, arts. 9 and 10) and are of such gravity as to confer on the detention of U Pa Pa Lay an arbitrary character (category III).

10. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights, and to take initiatives with a view to becoming a party to the International Covenant on Civil and Political Rights.

Adopted on 28 November 2000

## OPINION No. 39/2000 (ISLAMIC REPUBLIC OF IRAN)

Communication addressed to the Government on 13 April 2000

Concerning Abbas Amir-Entezam

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolution 1999/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.

2. The Working Group regrets that the Government has not replied within the 90-day deadline.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. According to the communication, Mr. Abbas Amir-Entezam, a 66 year-old Iranian engineer, was arrested on 28 September 1998 on charges of defamation. He was temporarily released in October 1999 to undergo medical treatment, but was returned to prison in December 1999 after granting an interview to an Iranian newspaper. Mr. Amir-Entezam is being held at Evin Prison, north of Tehran. He was permitted to leave prison on medial leave in March 2000, but was returned to prison nine days later, allegedly before he had recovered his health. It is alleged that the charges behind Mr. Amir-Entezam's arrest stem from his criticism of prison conditions and the treatment of prisoners at the time when Mr. Assadolah Lajavardi, a former prosecutor who was killed in 1998, was the chief of the country's prison system. These criticisms apparently were made in an interview granted to Voice of America when Mr. Amir-Entezam was under house arrest. Both Mr. Lajavardi's son and the National Prison Authority of Iran subsequently filed defamation charges against Mr. Amir-Entezam. According

to the information received, Mr. Amir-Entezam was not released on bail paid by his wife. In February 1999, Mr. Amir-Entezam was scheduled to appear before Branch 511 of Tehran's public court, but for unknown reasons, he was not present in court at that time. The court proceeded with the hearings in his absence, prompting his lawyers to leave the court in protest and call for a retrial. The request of the International Commission of Jurists to send an observer was also denied. This action of the court is said to contravene articles 570, 572 and 575 of the Constitution of Iran. Several weeks after the hearings, Branch 511 issued a public statement dismissing Mr. Amir-Entezam's case. Mr. Amir-Entezam served as deputy prime minister under the 1979 interim government of Mehdi Bazargan and is deemed to have solid knowledge of prison conditions and the treatment of prisoners in Iran's prisons, having served 16 years of a life sentence between 1980 and 1996. He had been arrested in December 1979 and charged with espionage for the United States on the basis of documents taken from the United States Embassy in Tehran while it was under occupation. These documents allegedly linked Mr. Amir-Entezam with several United States officials. Mr. Amir-Entezam was sentenced to death by an Islamic revolutionary court, despite the testimony of Mr. Bazargan that Mr. Amir-Entezam's meetings with United States officials had been authorized by the Government of Iran. The death sentence was subsequently commuted to life imprisonment and he was released from prison in 1996, although charges against him were never formally dropped. It is reported that Mr. Amir-Entezam has repeatedly requested an open trial in the course of which his name could be cleared and the suspended sentence dropped, but these requests have apparently been refused.

5. In the light of the foregoing, the Working Group notes that the charges of defamation against Abbas Amir-Entezam which are behind his detention are connected with an interview he allegedly granted to the Voice of America while under house arrest. During that interview, Abbas Amir-Entezam, who spent 16 years in prison between 1980 and 1996, criticized prison conditions and the treatment of prisoners at the time when Mr. Assadolah Lajavardi, a former procurator who was killed in 1998, was the chief of Iran's prison system. The Working Group also notes that Abbas Amir-Entezam has been under arrest since 28 September 1998 and has still not been brought to trial because Branch 511, a court of general jurisdiction before which he was to have appeared, declared that it lacked jurisdiction and referred his case to an Islamic revolutionary court.

6. In the opinion of the Working Group, the interview for which Abbas Amir-Entezam is reproached comes under the heading of his right to freedom of expression, a right guaranteed by article 19 of the Universal Declaration of Human Rights and by article 19 of the International Covenant on Civil and Political Rights. It therefore concludes that the detention of the above person as a result of this interview is arbitrary (category II).

7. Accordingly, the Working Group requests the Government to take the necessary steps to remedy the situation and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 29 November 2000

## OPINION No. 1/2001 (UZBEKISTAN)

Communication addressed to the Government on 2 August 2000

Concerning Munavar and Ismail Hasanov

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolution 1997/50, and reconfirmed by resolution 2001/40. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.

2. The Working Group regrets that the Government has not replied within the 90-day deadline.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to the source, on 18 November 1999, Manuvar Hasanov, 70 years old, was arrested by members of the Uzbek police on charges of possessing leaflets printed by the banned Islamic organization Hizb ut-Tahrir. According to the source, during interrogation he agreed to sign a confession statement, to put an end to the torture of his son Ismail Hasanov that he reportedly was forced to witness.

6. According to the information received, the police later confronted Ismail Hasanov with his father and threatened to continue to beat his father unless Ismail signed a confession statement, which he did. The source recalls that Ismail Hasanov, 27 years old, was arrested in April 1999, accused of Islamist extremism and convicted in August 1999 of anti-State activities. The authorities included Ismail Hasanov's name in a new case brought against individuals suspected of implication in an alleged terrorist incident in the Yangiabad region of Uzbekistan which took place in November 1999, when Ismail Hasanov was in fact already in prison. He was charged with having learned karate and studied Islam since 1997 with one of the alleged terrorists who died at the scene, and was sentenced to 25 years in prison on terrorism charges. He denied any involvement in any kind of violence or anti-State activity.

7. On 16 February 2000, the Tashkent Regional Court sentenced Munavar Hasanov to three years in prison for anti-constitutional activity, solely on the basis of leaflets found in his house. He denied possession of the leaflets and insisted that the police had conducted the search without a warrant and that they had fabricated and planted evidence in his house. He identified in the courtroom the officer who had allegedly put the leaflets in his home. It is said that the judge studiously ignored his intervention. Mr. Hasanov's three-year sentence was later extended by six months on charges that he had violated internal prison rules by not shaving his beard and not removing his skullcap while passing a guard.

8. In the light of the allegations presented by the source, which have not been denied by the Government although it had the opportunity to do so, the Working Group finds that the rights of Munavar and Ismail Hasanov under articles 9 and 10 of the Universal Declaration of Human Rights and articles 9, 10 and 14 of the International Covenant on Civil and Political Rights, to which Uzbekistan is a party, have been violated during their detention. Their rights to a fair trial have not been respected.

9. The Working Group concludes that the non-observance of the rights of Munavar and Ismail Hasanov to a fair trial is of such gravity as to confer an arbitrary character upon the deprivation of their liberty and falls within category III of the principles applicable to the consideration of cases submitted to the Working Group.

10. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 16 May 2001

## OPINION No. 2/2001 (UNITED STATES OF AMERICA)

Communication addressed to the Government on 10 October 2000

Concerning Mr. Waynebourne Clive Anthony Bridgewater

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolutions 1997/50 and 2000/36, and reconfirmed by resolution 2001/40. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.

2. The Working Group expresses its appreciation to the Government for having provided the information requested.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source. To date, the latter has not provided the Working Group with its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. According to the information submitted by the source to the Working Group, on 2 June 2000, Mr. Waynebourne Clive Anthony Bridgewater, a citizen and resident of Saint Kitts and Nevis, was reportedly seized by agents of the Drug Enforcement Agency (DEA) of the United States of America, from the beach of Frigate Bay, Saint Kitts, and brought to a prison in Antigua and Barbuda, where he spent one night without any charges.

6. It was reported that the following day, he was taken to the airport of Antigua by the DEA agents, placed on a DEA aircraft and flown to Puerto Rico, where he was incarcerated at the Federal Detention Center in Guaynabo. No Saint Kitts and Nevis law enforcement officer was present at any phase of the events and no charges were read to Mr. Bridgewater. On 6 June 2000, the High command of the Royal St. Christopher and Nevis Police Force issued a press release to this effect. The Attorney-General of Saint Kitts and Nevis has also issued a statement, calling on Antigua and Barbuda and the United States of America for information on the unauthorized removal of Mr. Bridgewater from Saint Kitts.

7. According to the information received, Mr. Bridgewater was subsequently charged with conspiracy in drug trafficking. In this context, it was alleged that the DEA agents had told Mr. Bridgewater that they were "forced" to kidnap him, as they wanted him to testify against one Charles Miller. Mr. Bridgewater had refused to cooperate with the DEA, as he claimed to have no knowledge of Mr. Miller's alleged drug-trafficking activities.

8. It was argued by the source that in the above case, several provisions of the international human rights instruments relied upon by the Working Group on Arbitrary Detention in the examination of cases brought to its attention have been violated.

9. The Government of the United States of America does not deny the fact that Mr. Bridgewater was arrested by United States government officials but specifies that the apprehension of Mr. Bridgewater took place in the waters of Saint Kitts and Nevis, when he was attempting to sell cocaine to undercover agents. In support of its allegations, the Government provided the Working Group with an order authorizing detention pending initial appearance issued by the United States District Court for the District of Puerto Rico, as well as with an affidavit by the undercover agents involved in the operation.

10. The Government also clarified that Mr. Bridgewater is currently awaiting trial in Puerto Rico. On 9 August 2000 he was indicted for conspiracy to distribute five or more kilograms of cocaine and for possessing a firearm in connection therewith.

11. The source did not challenge the replies given by the Government.

12. Since Mr. Bridgewater was arrested on charges of serious drug offences and is being kept in detention for the same offences, in respect of which he has already been indicted and is awaiting trial, the Working Group, bearing also in mind the difference between the circumstances of the present case from the facts on the basis of which it adopted its Opinion 48/1993, concludes that the deprivation of the liberty of Mr. Waynebourne Clive Anthony Bridgewater is not arbitrary.

Adopted on 16 May 2001

## OPINION No. 3/2001 (INDONESIA)

Communication addressed to the Government on 7 August 2000

Concerning Mr. Shauket Ali Akhtar and the members of the crew of the Kota Indah

The State has not ratified the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolutions 1997/50 and 2000/36, and reconfirmed by resolution 2001/40. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.

2. The Working Group regrets that the Government has not replied within the 90-day deadline.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. On 19 February 1999, the Kota Indah, a Singaporean vessel owned by Pacific International Lines (PIL), was towed into Surabaya inner harbour, Indonesia, and anchored under the guidance of the harbour pilot and with the approval of the port control. According to the vessel's harbour chart, the mooring area was not an area in which anchoring is prohibited.

6. Subsequently, the vessel's bridgemaster, Captain Shaukat Ali Akhtar, informed Surabaya port control that the vessel had dragged its anchor for a distance of approximately 460 metres. Thereafter, under the guidance of port control, the vessel's engines were used and the starboard anchor was heaved up, then again dropped for a short period.

7. On 21 February 1999, the police detained six members of the crew of the Kota Indah, Captain Shaukat Ali Akhtar, Mr. Daniel Attah-Gyasi, Mr. Krustiono Basuki, Mr. Miladin Vucetic, Mr. Zhang Chang You and Mr. Johny Erumbanath Antony. The authorities reportedly detained them for 60 days, without any charges.

8. PT Perusahaan Listrik Negara Company (PT PLN), a local power company and owner of the submarine Gresik-Madura Power Cable, brought a civil law suit against Pacific International Lines (PTE) Ltd. PT PLN alleged that the underwater power cable which went across the seabed of Surabaya harbour in the vicinity of the mooring space of the Kota Indah had been damaged by its anchor when the ship was adrift. On 14 June 2000, the Court of First Instance of Surabaya unanimously dismissed PT PLN's claim and declared that there was no evidence that the ship's crew had committed any intentional negligence.

9. According to the source, the Public Prosecutor has to date not submitted any formal charges in a parallel criminal case reportedly brought against the crew members. The crew members are not allowed to leave Indonesia and continue under city arrest (i.e. they are confined to Surabaya). Lastly, it was said that under normal circumstances an incident of this type should be settled through the civil courts and the ship's crew should not have been detained for such a long period.

10. Instruments relied upon by the Working Group in the examination of communications brought to its attention have been violated. This concerns in particular article 9 of the Universal Declaration of Human Rights.

11. The Working Group points out that the source formulates two different allegations concerning the unlawful and arbitrary deprivation of liberty to which six crew members of the Kota Indah were subjected, which deserve to be examined separately.

(i) First, it was contended that the six crew members were detained on 21 February 1999 by police officers and kept in detention for a period of 60 days without any charge. The Public Prosecutor brought no charge against them subsequent to their release from police custody.

(ii) Second, it was alleged that the crew members were not allowed to leave Indonesia and were confined to Surabaya.

12. With regard to the arrest of the six crew members and their detention in police custody, the Working Group points out that this was a clear case of deprivation of liberty. The six members of the crew, Mr. Shaukat Ali Akhtar, Mr. Daniel Attah-Gyasi, Mr. Krustiono Basuki, Mr. Miladin Vucetic, Mr. Zhang Chang You and Mr. Johny Erumbanath Antony were all held in police custody, locked up permanently for 60 days without any warrant of arrest having been issued against them.

13. With regard to their being prevented from leaving Indonesia and their being confined to Surabaya City, the Working Group refers to its constant jurisprudence, formulated in clear terms in its Deliberation 1/1993, under which house arrest and similar measures are qualified as deprivation of liberty only if the person concerned is placed in closed and locked premises which he cannot leave without being authorized to do so. In the view of the Group, the measure taken against the six crew members of the Khota Indah preventing them from leaving Indonesia is not a measure of deprivation of liberty within the meaning of the mandate of the Working Group, but a measure which restricts freedom of movement within the meaning of article 13 of the Universal Declaration of Human Rights.

14. In the light of the foregoing, the Working Group renders the following opinion:

(i) The arrest and detention for 60 days of six members of the crew of the vessel the Kota Indah are arbitrary since they are contrary to article 9 of the Universal Declaration of Human Rights and fall within category III of the principles applicable in the consideration of cases submitted to the Working Group.

(ii) Since the measure taken in respect of the crew members of the Kota Indah preventing them from leaving Indonesia or the city of Surabaya does not fall into the category of deprivation of liberty, the Working Group does not deem necessary to take a position as to whether it was arbitrary or not.

15. The Working Group requests the Government to take the necessary steps to remedy the situation, to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and to avoid the occurrence of such practices in the future.

Adopted on 16 May 2001

**OPINION No. 4/2001 (VIET NAM)**

Communication addressed to the Government on 12 September 2000

Concerning Thich Huyen Quang

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was extended and clarified by resolutions 1997/50 and 2000/36, and re-confirmed by resolution 2001/40. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regrets that the Government did not reply within the 90-day time limit.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to the information received, Mr. Thich Huyen Quang, an 83-year-old Buddhist monk, human rights defender and Patriarch of the banned Unified Buddhist Church of Viet Nam (UBCV) was arrested on 25 February 1982 by the Security Police (Cong' an) in Ho Chi Ming City. Subsequently, he was reportedly sent into internal exile without charges. According to the source, since 1982, he has remained under house arrest in Cho Chua,

Nghia Hanh District, Quang Nhai Province; has been deprived of the right to communicate freely with the outside world; denied his freedom of movement; and been prohibited from returning to his home in Pagoda An Quang, Ho Chi Ming City.

6. Mr. Thich Huyen Quang is reportedly subjected to continuous harassment and interrogations by the local security police. According to the source, the police have accused him of "anti-government activities" because of a letter he sent to the Government in April 2000, in which he called on the Government publicly to regret its alleged crimes against the Vietnamese people and to proclaim 30 April, the anniversary of the fall of Saigon, a national day of repentance of the Communist Party of Viet Nam (CPV). According to Mr. Thich Huyen Quang's verbatim account of the event, the police and officials interrogated him aggressively, threatening and intimidating him for several hours. Subsequently, the police drew up minutes of the proceedings and reportedly ordered him to sign. He refused, stating that the minutes recorded the police's accusations, but not his answers. Finally, the police allegedly forced him to sign.

7. Although the Government of Viet Nam has reportedly denied that Mr. Thich Huyen Quang is under house arrest, it refuses him the right to freedom of movement, monitors his correspondence and is said to block visits from foreign journalists. The Special Rapporteur of the Commission on Human Rights on the question of religious intolerance, Mr. Abdelfattah Amor, was not allowed to meet Mr. Thich Huyen Quang during his visit to Viet Nam in October 1998.

8. The Working Group has maintained, in accordance with its Deliberation 1/93, that house arrest is qualified deprivation of liberty only if the person concerned is placed in closed and locked premises which he cannot leave without being authorized to do so.

9. The house arrest restrictions placed on Mr. Thich Huyen Quang, according to which he may not return to his home in Pagoda An Quang, Ho Chi Minh City, cannot communicate freely and is under surveillance, meet the conditions for being considered deprivation of liberty. The fact that the practice of his faith, a right guaranteed in the international instruments, is used to justify these restrictions gives an arbitrary slant to his house arrest.

10. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of Mr. Thich Huyen Quang's liberty is arbitrary as constituting a breach of the provisions of articles 9, 10, 13 and 18 of the Universal Declaration of Human Rights and articles 9, 12 and 18 of the International Covenant on Civil and Political Rights, falling under category II of the principles applicable to the consideration of cases submitted to the Working Group.

11. The Working Group accordingly requests the Government to take the necessary steps to remedy the situation and to bring it into conformity with the standards and principles set forth in articles 9, 10, 13 and 18 of the Universal Declaration of Human Rights and articles 9, 12 and 18 of the International Covenant on Civil and Political Rights.

Adopted on 17 May 2001

## OPINION No. 5/2001 (NEPAL)

Communication addressed to the Government on 7 March 2000

Concerning Krishna Sen

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolutions 1997/50 and 2000/36, and reconfirmed by resolution 2001/40. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.

2. The Working Group regrets that the Government has not replied within the 90-day time limit.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. According to the source, Mr. Krishna Sen, the editor-in-chief of the Nepalese-language weekly Janadesh, was first arrested in Kathmandu on 19 April 1999 and detained under the provisions of the Public Security Act, which allows for the preventive detention of those considered a threat to domestic security and tranquillity. The police filed a charge sheet recording Mr. Sen's arrest on 20 April 1999. It was reported that Mr. Sen's arrest was prompted by that week's edition of Janadesh, which featured an interview with Mr. Baburam Bhattarai, one of the presumed leaders of the Maoist insurgency in Nepal. On the day of Mr. Sen's arrest, the police reportedly confiscated some 20,000 copies of the weekly, in order to prevent the said interview from being widely read.

5. On 10 August 1999, the Supreme Court ordered the release of Mr. Sen. Yet, according to his lawyer, Mr. Yekraj Bhandari, the local police and district officials then conspired to keep Mr. Sen in detention by forging his release papers and re-arresting him on fabricated charges.

6. Mr. Sen is said to have been held initially at Bhadragol Prison in Kathmandu. On 9 February 2000, the prison authorities allegedly forced Mr. Sen to sign papers which certified his release. According to the source, he was instead moved to the Maharajgunj Police Training Centre. It has been reported that this training facility has been used for the secret and unacknowledged detention of those suspected of involvement with the Maoist insurgency.

7. The police in the south eastern district of Siraha reportedly filed a new charge sheet against Mr. Sen on 13 February 2000. Under its reported terms, Mr. Sen was arrested on 13 February around 1 a.m. for carrying illegal weapons. The source alleges that, on the contrary, Mr. Sen was directly transferred to Siraha prison on 13 February and that the new charges against him are false and without basis. Mr. Sen is now held at the prison of Siraha under the Arms and Ammunition Act. No date for his trial has allegedly been determined.

8. In the light of these allegations made by the source, which have not been denied by the Government although it had the opportunity to do so, the Working Group takes into consideration for the purpose of rendering its opinion that:

(i) Krishna Sen, editor-in-chief of the Nepalese-language weekly "Janadesh", was arrested in Kathmandu on 19 April 1999 by the police because of an interview with Baburam Bhattarai, one of the presumed leaders of the Maoist insurgency in Nepal;

(ii) Despite the fact that the Supreme Court ordered his release on 10 August 1999, he was immediately rearrested by the local police;

(iii) This violation of a judicial decision is particularly serious because it was a decision of the highest judicial authority in the land and the violation occurred after those responsible for Krishna Sen's arrest had not only forged his release papers but also arranged for the authorities at Bhadragol prison, Kathmandu to force him to sign a statement on 9 February 2000 certifying that he had been released;

(iv) After his eventual release, he was rearrested on 13 February 2000 on new charges of carrying illegal weapons and has been held secretly since that date, probably in Siraha Prison.

9. Krishna Sen has therefore been subjected to three distinct periods of detention:

(i) The first period of detention occurred between his arrest (19 April 1999) and the Supreme Court order for his release (10 August 1999);

(ii) The second period occurred between the date of his rearrest on the same day, in violation of the Supreme Court decision, and the date (unspecified) of his subsequent release;

(iii) The third period is the current one, from the time of his second rearrest on 13 February 2000 to date, assuming he has not been released without the Working Group's knowledge.

10. In the light of these distinct periods of detention, the Working Group takes the following position:

(i) With regard to the first period of detention, the Working Group considers that it does not have enough information at its disposal to give an opinion on the arbitrary nature or otherwise of Krishna Sen's detention, given that the Supreme Court had played its part as guarantor of liberty by ordering Krishna Sen's release;

(ii) With regard to the second period, the rearrest and detention of a person in violation of a judicial decision - in this case a Supreme Court decision - constitutes a deprivation of liberty that manifestly cannot be justified on any legal basis and is therefore, by definition, of an arbitrary nature;

(iii) With regard to the third period of detention, the Working Group considers that, however serious the charges brought by the authorities against Krishna Sen - a point on which the Working Group has no mandate to give an opinion - secret detention of a person is in itself a violation of the right to a fair trial, which is protected by articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, of such gravity as to confer on the deprivation of liberty of the above-mentioned person an arbitrary character.

11. In the light of the foregoing, the Working Group renders the following opinion:

(i) The detention of Krishna Sen after the Supreme Court had ordered his release constitutes a deprivation of liberty that manifestly cannot be justified on any legal basis and falls, for this reason, within category I of the categories applicable to the consideration of cases submitted to the Working Group;

(ii) The deprivation of liberty of Krishna Sen since his arrest on 13 February 2000 (third period) is arbitrary, being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

12. Having rendered this opinion, the Working Group requests the Government to take the necessary steps to remedy the situation, in conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and to hold the persons responsible accountable, in conformity with Commission on Human Rights resolution 2001/70 on impunity.

Adopted on 17 May 2001

## OPINION No. 6/2001 (FEDERAL REPUBLIC OF YUGOSLAVIA)

Communication addressed to the Government on 11 August 2000

Concerning Vladimir Nikolic and Xhevat Podvorica

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolutions 1997/50 and 2000/36, and reconfirmed by resolution 2001/40. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.

2. The Working Group conveys its appreciation to the Government for having provided the requisite information in good time.

3. By note dated 27 February 2001, the Government informed the Working Group that the two above-mentioned individuals were released in the following circumstances:

> Mr. Vladimir Nikolic. By first instance sentence No. 502/99 of 3 March 2000 pronounced by the District Court in Belgrade, the said person was found guilty and sentenced to a total of one year and 10 months' imprisonment. By second instance decision No. 733/00 of the Supreme Court of the Republic of Serbia, the first instance sentence was altered to a total of one year and one month's imprisonment. The said person had been in pre-trial detention from 2 October 1999 to 10 May 2000 in the District Prison in Belgrade and as of 10 May, upon his request, he continued to serve his sentence in the Penal Correctional Institution in Pozarevac until 26 October 2000. From that date he was on parole till 2 November 2000, when he was released from prison.
>
> Mr. Xhevat Podvorica. The said person had been in pre-trial detention in the Penal Correctional Institution in Sremska Mitrovica from 10 June to 6 November 2000 when, along with other persons of Albanian nationality he was transferred for security reasons to the District Prison in Belgrade. Upon termination on the pre-trial detention, the said person was handed over, on 9 November 2000, to employees of the International Committee of the Red Cross.

4. The Working Group transmitted the reply provided by the Government to the source, who has confirmed the release of the individuals mentioned above. The Working Group is in a position to render an opinion on the case.

5. Taking note of these releases and having examined all the available information before it, and without prejudging the arbitrary nature of the detention, the Working Group decides to file the case of the above-mentioned two individuals, in accordance with paragraph 17 (a) of its revised methods of work.

Adopted on 17 May 2001

## OPINION No. 7/2001 (PEOPLE'S REPUBLIC OF CHINA)

Communication addressed to the Government on 26 April 2000

Concerning Tohti Tunyaz

The State has signed but not ratified the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolutions 1997/50 and 2000/36, and reconfirmed by resolution 2001/40. Acting in accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group conveys its appreciation to the Government for having provided the requisite information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source and has received its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. Mr. Tohti Tunyaz, a Chinese citizen born in 1959 and a doctoral candidate at the Graduate School of Humanities of the University of Tokyo specializing in the history of Chinese policy towards members of minority groups in the nineteenth and twentieth centuries, was visiting Urumchi, on 6 February 1998, for the purpose of collecting source material for his thesis, when he was arrested and charged with the crimes of instigating national disunity and

leaking confidential documents. On 10 March 1999, the court of first instance in Urumchi sentenced him to 11 years' imprisonment and 2 years' deprivation of his citizenship. Mr. Tunyaz immediately appealed his sentence to the High Court in Urumchi, which dismissed the appeal in March 2000.

6. The court's decision was based on the assumption that Mr. Tunyaz had intended to publish a book in Japan for the sole purpose of instigating national disunity, and made copies of confidential documents at Urumchi so as to leak them to foreigners. The source, however, affirms that Mr. Tunyaz is a scholar who uses scientific methodology to study his subject, based on historical facts, not on ideology. The source affirms that pursuant to the terms of the court judgement, which the source was able to consult in August 1999, neither the (purported) book nor its manuscript was submitted to the court as proof. To the source's best knowledge, Mr. Tunyaz never wrote such a book in Japan.

7. As to the charge of leaking confidential documents, the source affirms that Mr. Tunyaz had received copies of documents from a librarian, after having been authorized by the authorities to do so. The foreigner who was alleged to have received the documents was never identified during the trial. The source accordingly concludes that the court judgement was based on a misrepresentation of facts relating to Mr. Tunyaz's activities: collection of source materials to complete a doctoral thesis dealing with the modern history of the Uighur people.

8. The authorities of the University of Tokyo have made the following representations to the Chinese authorities and/or the judicial instances in Urumchi, but none of them was successful.

9. The Government of the People's Republic of China, in its reply, states that Tohti Tunyaz, a Uighur male from Baicheng county in Xinjiang, went to Japan in 1994 to study. Since 1995, subsidized by foreign ethnic separatist organizations and anti-China forces in Japan, Mr. Tunyaz made annual trips back to the People's Republic of China to collect large quantities of State secrets. He also impersonated leading State cadres and bluffed his way around in Xinjiang and elsewhere, using deceit and bribery, among other means, to steal large quantities of classified material from the archives of the Autonomous Region and related State offices. He also apparently took these classified materials out of the country in order to give them to certain foreign organizations.

10. The Government states that on 10 March 1999 the Urumqi Intermediate People's Court tried Tohti Tunyaz and sentenced him to five years' imprisonment for the crime of stealing State secrets and 7 years' imprisonment for the crime of inciting national disunity; his consolidated sentence was 11 years and he was also deprived of his political rights for 2 years. Tohti Tunyaz filed an appeal with the Xinjiang Autonomous Region Higher People's Court and on 15 February 2000 this court rejected his appeal on second hearing and upheld the original verdict. Tohti Tunyaz is currently serving his sentence in Xinjiang Uighur Autonomous Region Prison No. 3.

11. The Government further advised that, while under investigation, Tohti Tunyaz steadfastly refused to confess his crime. Evidence of his crime includes, however, five top-secret archives and one classified document, all stolen by illegal means; two address books containing the names and telephone numbers of several important members of Xinjiang ethnic separatist movements in

other countries; a camera and micro-cassette recorder specially designed for stealing secret information; and notebooks and similar materials containing a large number of State secrets. In the course of the trial, the court also produced part of the original Japanese manuscript of The Inside Story of the Silk Route, a book advocating ethnic separatism, which Tohti Tunyaz had published in Japan in 1998.

12. According to the Government, the Constitution and laws of the People's Republic of China afford Chinese citizens full freedom of expression, opinion and association. It points out that in exercising these rights and freedoms, however, citizens must undertake certain corresponding obligations, such as refraining from actions that threaten national security, public safety, order or the rights and freedoms of others, in accordance with articles 18 and 22 of the International Covenant on Civil and Political Rights. In that regard, the Working Group welcomes and appreciates the fact that the Government, in its reply, makes reference to the International Covenant on Civil and Political Rights, which it has only signed. The Government pointed out that anyone who incites splitting the country and undermines national unity shall be sentenced to not more than five years of fixed-term imprisonment, criminal detention, control or deprivation of political rights; ringleaders or those whose crimes are grave shall be sentenced to not less that five years' fixed-term imprisonment

13. The Government further pointed out that in the People's Republic of China, simply having thoughts or beliefs without carrying out acts that violate criminal law does not constitute a crime. And it is even less likely that a scholar will be punished for expressing his academic viewpoint. Tohti Tunyaz, having stolen large quantities of State secrets, engaged in activities aimed at inciting ethnic separatism and seriously violated the laws of the People's Republic of China, merits punishment. Lastly, the Government concludes that the trials of Tohti Tunyaz by the Urumqi Intermediate People's Court and the Xinjiang Autonomous Region Higher People's Court were in accordance with the Constitution, the Code of Criminal Procedure and the relevant United Nations human rights instruments.

14. Acting in accordance with its methods of work, the Working Group forwarded the information supplied by the Government to the source, so that it could make additional comments, which it has done. The source states that Tohti Tunyaz published no book advocating ethnic separatism, making it impossible for him to have incited national disunity. It states that the Government's reply to the Working Group mentions that the court produced in the trial "part of the original Japanese manuscript of the book", which is not the actual publication, and the mere thought or plan of publishing, according to the Government's own interpretation, would not constitute a crime. Only the actual publication of such a book could.

15. The source insists there is no Japanese publication written by Mr. Tunyaz with a title related to "the Silk Road", "Inside Stories", or any topic related to his area of expertise, and no such title exists in the general index of books for the years leading up to or following the year 1998. Furthermore, a Japanese publisher, Sofukan, that once approached Tohti Tunyaz with its own plan to publish a book, has already written three letters to the courts trying Mr. Tunyaz explaining in full its offer and the circumstances under which that offer was not accepted by Mr. Tunyaz.

16. The source also states that Mr. Tunyaz was arrested on a charge of collecting materials for the purpose of writing and publishing a book aimed at ethnic separation, but the Government's reply explicitly states that he had already published a book in 1998 before his arrest and is far too contradictory and inadequate on the charge of publishing to incite ethnic separatism.

17. The source contests the information from the Government about the motivation for Mr. Tunyaz allegedly "stealing" State secrets. It considers that the description of him as using deceit and bribery, among other means, to steal large quantities of classified materials is inaccurate. It states that the Higher People's Court decision describes in detail the way in which Mr. Tunyaz copied a list of documents, not the documents themselves, relating to the second East Turkestan Independence Movement of 1944 - a list of documents more than 50 years old. The Higher Court based its decision only on the acquisition of the above-mentioned single list of documents of 1944 and not on "large quantities of classified materials". In the decision of the Higher Court, the source cannot find any mention of impersonation, deception or bribery on the part of Tohti Tunyaz. The 50-year-old list was given to him by a clerk working at the archives. The clerk brought the list to the hotel where Mr. Tunyaz was staying.

18. The source contends that there has been exaggeration about the evidence and states that some evidence mentioned by the Government has not been found in the trials. Some items mentioned by the Government, such as two address books with names of separatists, a camera and micro-cassette recorder, etc., were not admitted as evidence by the Higher Court. The source concludes that Mr. Tunyaz was sentenced to five years' imprisonment for improperly acquiring a single list of documents of historical interest concerning events that occurred more than 50 years ago. Such a list was obviously to be used in his ongoing historical research on the East Turkestan Independence Movement of 1944.

19. The Working Group is of the view that Mr. Tohti Tunyaz, as a graduate student and academic researcher, a fact not denied by the Government, has attempted to exercise his right to undertake academic research and collect data on this special subject, within the framework of his work as an academic researcher, a right guaranteed in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

20. In this context, the Working Group would like to refer to paragraph 86 of its most recent report to the Commission on Human Rights (E/CN.4/2001/14), in which it expresses its concern at the increasing misuse of the term "State secrets" to describe certain information the collection and dissemination of which are protected as fundamental freedoms under article 19 of the International Covenant on Civil and Political Rights.

21. According to information before the Working Group, especially that provided by the University of Tokyo, at whose Graduate School Mr. Tunyaz was a student, the data investigated were purely scientific. What is more, the allegations that the data might affect the unity of the People's Republic of China have in no way been proved.

22. Likewise, the Working Group considers that Mr. Tohti Tunyaz cannot be sentenced merely for writing a research paper, which, even if it were published, lay within his right to exercise the freedoms of thought, expression and opinion which are enjoyed by everyone and which can by no means be regarded as reprehensible if exercised through peaceful means, as they were in this case.

23. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Tohti Tunyaz is arbitrary, as it contravenes articles 9, 18 and 19 of the Universal Declaration of Human Rights and articles 9 and 19 of the International Covenant on Civil and Political Rights, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

24. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and to bring it into conformity with the principles and standards set forth in the Universal Declaration of Human Rights, and encourages the Government to ratify the International Covenant on Civil and Political Rights, which it has signed.

Adopted on 17 May 2001

## OPINION No. 8/2001 (PEOPLE'S REPUBLIC OF CHINA)

Communication addressed to the Government on 12 September 2000

Concerning Jiang Qisheng

The State has signed but not ratified the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolutions 1997/50 and 2000/36, and reconfirmed by resolution 2001/40. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regrets that the Government did not reply within the 90-day deadline.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to the source, Mr. Jiang Qisheng, a 52-year-old pro-democracy activist, was arrested by the police at his home in Beijing on 18 May 1999 and transferred to the Beijing Municipal Detention Centre. The charges against him were reportedly not made public.

6. On 1 November 1999, Mr. Jiang Qisheng was tried. According to the information received, the court was called to recess without reaching a verdict. A decision was due to be reached in January 2000 on whether to call a retrial or to hand down a verdict, but no decision apparently has been announced to date. He has since been held in detention.

7. According to the source, Mr. Jiang Qisheng was previously imprisoned for 17 months for his involvement in the 1989 "pro-democracy movement", and he has reportedly been briefly detained on several occasions since for his dissident activities. His arrest and detention are believed to be linked to an interview he gave to The Boston Globe a day before his arrest, in which he had been critical of the response of the Government of the People's Republic of China to events in Kosovo, and a statement he published at approximately the same time in which he called for a full investigation into events that occurred on 4 June 1989.

8. Mr. Jiang's wife, Zhang, was informed of her husband's arrest only several days later. She was not provided with the exact time of arrest nor with the official arrest notice, in alleged violation of the Criminal Procedure Law of the People's Republic of China. This denial of access to the official arrest notice, effectively delayed the involvement of Mr. Jiang Qisheng's lawyer and hindered his ability to prepare the case, thereby restricting Mr. Jiang Qisheng's right to legal counsel and defence.

9. In the light of the allegations, which the Government has not refuted although it had the opportunity to do so, the Working Group believes that Jiang Qisheng's arrest and imprisonment were based solely on the free expression of his views in a newspaper interview during which he expounded his ideas and made a public statement in a peaceful manner. In so doing, he was simply exercising the right to freedom of opinion and expression guaranteed by article 19 of the Universal Declaration of Human Rights, including the right of everyone to hold opinions without interference and the right to impart ideas through any media.

10. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of the liberty of Jiang Qisheng is arbitrary, being in contravention of articles 9 and 19 of the Universal Declaration of Human Rights, and falls within category II of the categories applicable to cases submitted to the Working Group.

11. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights, and encourages the Government to ratify the International Covenant on Civil and Political Rights, which it has signed.

Adopted on 17 May 2001

**OPINION No. 9/2001 (QATAR)**

Communication addressed to the Government on 1 December 2000

Concerning Mr. Abdul Rahman Amair Al-Noaimi

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolutions 1997/50 and 2000/36, and reconfirmed by resolution 2001/40. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.

2. According to the information received by the Working Group, on 16 June 1998, Mr. Abdul Rahman Amair Al-Noaimi was arrested by the secret police of Qatar, "The Mabahith", and transferred to Aé-Rayyan police station in Doha. According to the source, no arrest warrant was issued. It was alleged that he has since been detained without being allowed to have access to his lawyer and his family. It remained unknown on which specific charges the arrest and detention of this person were based and whether he had been formally charged or tried since the date of his arrest.

3. The Working Group conveys its appreciation to the Government for having provided the requisite information in good time.

4. The Working Group takes note with satisfaction of the information from the Government that Mr. Abdul Rahman Amair Al-Noaimi is no longer in detention. This information was transmitted to the source, who has not communicated his observations. The Working Group is in a position to render an opinion on the case.

5. Having examined all the available information before it, and without prejudging the arbitrary nature of the detention, the Working Group decides to file the case of Mr. Abdul Rahman Amair Al-Noaimi, in accordance with paragraph 17 (a) of its revised methods of work.

Adopted on 12 September 2001

## OPINION No. 10/2001 (PERU)

Communication addressed to the Government on 16 January 2001

Concerning José Victoriano Acevedo Orbegoso

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolutions 1997/50 and 2000/36, and reconfirmed by resolution 2001/40. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

3. The Working Group conveys its appreciation to the Government for having provided the requisite information in good time. The Government's reply was transmitted to the source.

4. In the light of the allegations formulated, the Working Group welcomes the cooperation of the Government and the information provided, to the effect that Mr. Acevedo was pardoned by the President of the Republic, Dr. Valentín Paniagua, on 29 January 2001, under the powers conferred upon him by article 118, paragraph 21, of the Political Constitution of Peru ("It is the competence of the President of the Republic ... to grant pardons and commute sentences ..."), and that since then Mr. Acevedo has enjoyed full liberty.

5. The Working Group transmitted the reply provided by the Government to the source, who has confirmed Mr. Acevedo's release. The Working Group is in a position to render an opinion on the case.

6. Having examined all the available information before it, and without prejudging the arbitrary nature of the detention, the Working Group decides to file the case of Mr. Acevedo, in accordance with paragraph 17 (a) of its methods of work.

Adopted on 12 September 2001

## OPINION No. 11/2201 (VIET NAM)

Communication addressed to the Government on 5 June 2001

Concerning a Buddhist monk, Mr. Thich Quang Do

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolutions 1997/50 and 2000/36, and reconfirmed by resolution 2001/40. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group conveys its appreciation to the Government for having provided the requisite information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source, which has not provided it with its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. According to the source, on 31 May 2001, Thich Quang Do, a monk of the banned Unified Buddhist Church of Viet Nam, was condemned to two years' administrative detention under the provisions of Government Decree 31/CP and forbidden to leave his pagoda. This decree reportedly empowers the police to order the detention of citizens suspected of threatening national security without formal charges or trial.

6. On 1 June 2001, the police blocked the entry to the Thanh Minh Zen monastery in Ho Chi Minh City and members of the Unified Buddhist Church of Viet Nam trying to visit Thich Quang Do were turned away. Police officers cut the monastery's telephone lines and seized Thich Quang Do's mobile phone. Ten security police officers were placed inside the monastery and others were stationed outside. They have intensified controls around the monastery residence and are closely searching visitors and blocking communications. Two officers keep permanent guard outside Thich Quang Do's room on the third floor, blocking all access. Currently he is under house arrest and cannot leave the monastery.

7. The detention of Thich Quang Do is believed to be related to a letter to the Government in which he called on it to release Patriarch Thich Huyen Quang and allow him to return to An Quang pagoda in Ho Chi Minh City, where he lived before his arrest in 1982. Thich Quang Do reportedly wrote to the authorities that he would personally travel to Quang Ngai province with a delegation to escort Thich Huyen Quang back home.

8. According to the source, the detention of Thich Quang Do is contrary to articles 9, 10, 13 and 18 of the Universal Declaration of Human Rights and articles 9, 12 and 18 of the International Covenant on Civil and Political Rights. He has never used or threatened or advocated violence, but has only advocated the use of peaceful actions permissible under the freedoms protected under international law.

9. In its reply, dated 20 August 2001, the Government of Viet Nam explains that in 1995, Thich Quang Do was sentenced by the People's Court of Ho Chi Minh City to five years' imprisonment, and another five years of administrative surveillance, which will take effect as of the end of his prison term, for acts in violation of articles 81 and 205a of the Penal Code of Viet Nam (the Penal Code was amended on 21 December,1999).

10. On 28 August 1998, Thich Quang Do was granted special amnesty and released from prison before his term ended and he returned to Ho Chi Minh City. However, according to the Government's reply, Thich Quang Do is still under the administrative surveillance in accordance with the decision of the court. The duration of the administrative surveillance, as the court decided, is from 3 September 1998 to 3 September 2003. On 31 May 2001, the People's Committee of Phu Nhuan District issued an implementing decision which specifies the place of administrative surveillance for Thich Quang Do as 90, Tran Huy Lieu Road, Ward 15, Phu Nhuan District, Ho Chi Minh City.

11. From the foregoing, it appears that the communication before the Working Group relates to a case of house arrest. In this regard, the Working Group will have to consider, in the light of its deliberation 01 (E/CN.4/1993/24, para. 20), whether, in the case in question, such a measure constitutes deprivation of liberty and, if so, whether it is of an arbitrary character.

12. With regard to the first point, the Working Group recalls that, in accordance with its deliberation 01, house arrest constitutes a measure of deprivation of liberty when it is carried out in closed premises which the person is not allowed to leave. In the case in question, the Working Party notes that, according to the information transmitted to it by the source and not contested by the Government in its reply, Thich Quang Do has been under house arrest in his monastery

since 1 June 2001 and has been unable to leave, that police officers are permanently stationed inside the monastery and at its entrance to prevent access by visitors, that the monastery's telephone line has been cut and that Thich Quang Do's mobile telephone has been confiscated.

13. The Working Group therefore considers that the house arrest of Thich Quang Do is indeed a measure of deprivation of liberty within the meaning of the aforementioned deliberation 01.

14. According to the source, the measure depriving Thich Quang Do of liberty in the form of house arrest was put into effect just when he was preparing to lead a demonstration in support of the Patriarch of the Unified Buddhist Church of Viet Nam, while the Government, in its reply, maintains that the house arrest was the result of a court order.

15. The Working Group notes that the Government admits that, in 1998, Thich Quang Do benefited from an amnesty when he still had two years' imprisonment to serve. As a result, his house arrest should have been put into effect on the day of his release, i.e. in 1998. That was not the case, which supports the source's theory that it was Thich Quang Do's intention to take part in a peaceful demonstration that gave rise to his house arrest.

16. Thich Quang Do merely peacefully exercised the rights guaranteed by articles 18 and 19 of the Universal Declaration of Human Rights and articles 18 and 19 of the International Covenant on Civil and Political Rights.

17. In the light of the foregoing, the Working Group renders the following opinion:

> The house arrest of Thich Quang Do is an arbitrary deprivation of liberty, being in contravention of articles 18 and 19 of the Universal Declaration of Human Rights and articles 18 and 19 of the International Covenant on Civil and Political Rights, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

18. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights, and recommends that the authorities should terminate the aforementioned measure of house arrest.

Adopted on 12 September 2001

## OPINION No. 12/2001 (MYANMAR)

Communication addressed to the Government on 21 May 2001

Concerning Paw Oo Tun

The State has not signed and ratified the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolutions 1997/50 and 2000/36, and reconfirmed by resolution 2001/40. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.

2. The Working Group conveys its appreciation to the Government for having provided it with information concerning the communication.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. According to the source, Paw Oo Tun, known as "Min Ko Naing", born in October 1962 in Rangoon, studied at Botataung Regional College in Rangoon, where he majored in Zoology. He continued his studies at the Rangoon Arts and Science University. He was said to be an active student leader and was elected chairman of the All Burma Federation of Student unions (ABFSU). As such, he participated in demonstrations against Order 2/88, which prohibited, inter alia, gatherings of more than four persons.

5. Paw Oo Tun was arrested on 23 March 1989 in Rangoon by military intelligence personnel, who did not show a warrant or other decision by a public authority for his arrest. He was arrested shortly after visiting the house of the leader of the National League for Democracy, Aung San Suu Kyi.

6. On 17 December 1991, a military court sentenced him to a term of 15 years in prison with hard labour, after having found him guilty of disturbing public order, peace and tranquillity; of repeatedly violating Order 2/88 forbidding gatherings of more than four people; and of forming student unions, prohibited under the Law to Protect National Unity of 1964. He was sentenced under section 5 (j) of the 1950 Emergency Provisions Act and section 17 (1) and (2) of the Unlawful Associations Act 1908.

7. The source alleges that his trial was not public. It was held within Insein Prison. Paw Oo Tun was denied any legal defence representation at his trial and other proper safeguards for his defence. Inter alia, he was denied the right to call witnesses in his defence.

8. Paw Oo Tun was allegedly kept in solidarity confinement and subjected to torture and beatings during the first few years of his imprisonment.

9. Pursuant to paragraph 2 (c) of Order 1/93, all sentences passed between September 1998 and December 1992 were commuted to a term of 10 years. In addition to this commutation, prisoners are entitled to remission from that 10-year sentence, of at least four days per month, plus 15 days per year, i.e. at least 63 days per year. Taking account of the commutation of his sentence to a 10-year term and the periods of remission to be applied, Paw Oo Tun should have been released in or about March 2000, at the latest. His prison term has therefore expired. He has already served his full sentence and is legally entitled to immediate release. Early in 2000, the prison authorities advised his parents that he would be released in March 2000, but no release was effected.

10. According to the source, Paw Oo Tun is being kept in detention merely for peaceful assertion of his beliefs about freedom of thought, expression, association, such as on the right to form student unions, on governmental reform and on better education. His detention is said to be contrary to articles 18, 19, 20, 21 and 28 of the Universal Declaration of Human Rights. He has not used or threatened or advocated violence, but has only advocated the use of peaceful political and social actions permissible under the freedoms protected under international law.

11. It is also asserted that, in this case, a number of provisions of the international instruments relied upon by the Working Group in the examination of communications brought to its attention have been violated, in particular articles 9 and 10 of the Universal Declaration of Human Rights.

12. In its reply the Government explains that while serving his 15-year prison term, a new action was taken against Paw Oo Tun on 21 July 1999, based on the Law to Safeguard the State against the Dangers of those Desiring to Cause Subversive Acts. It does not comment on the allegation of the source that Paw Oo Tun's prison term has already been served and that, therefore, he is being kept in detention without any legal basis.

13. In the light of the information available to it, and bearing in mind that the Government has not denied the allegation that Paw Oo Tun is being kept in detention for the peaceful expression of his beliefs about the freedoms of thought, opinion and association, such as the right to form student unions, without resorting to or threatening to use violence, the Working Group finds that he is being detained merely for having advocated the use of peaceful political actions

manifesting his opinion and conviction in matters of public interest, which is compatible with the freedoms protected by international law. The Working Group also finds that the prison term to which he was sentenced was fully served by March 2000.

14. In the light of the foregoing, the Working Group renders the following opinion:

(i) The deprivation of the liberty of Paw Oo Tun is arbitrary, being in contravention of articles 9, 19 and 20 of the Universal Declaration of Human Rights and falls within categories I and II of the categories applicable to the consideration of cases submitted to the Working Group.

(ii) The Working Group decides, furthermore, to transmit the information concerning the alleged ill-treatment of Paw Oo Tun to the Special Rapporteur on the question of torture.

15. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights, and to take appropriate steps with a view to becoming a party to the International Covenant on Civil and Political Rights.

16. The Working Group also decides to transmit this opinion to the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar.

Adopted on 12 September 2001

## OPINION No. 13/2001 (MYANMAR)

Communication addressed to the Government on 11 April 2001

Concerning Aye Tha Aung, Cin Shing Thang, Do Htaung, Duwa Zaw Aung, Khun Myint Tun, Kyin Thein, Min Soe Lin, Saw Naing Naing, Saw Mra Aung, Saw Oo Rah and Toe Po

The State is not a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolutions 1997/50 and 2000/36, and reconfirmed by resolution 2001/40. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.

2. The Working Group conveys its appreciation to the Government for having provided the requisite information in good time. The Government's reply was transmitted to the source, which sent its comments thereon to the Working Group.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. The Working Group transmitted the reply provided by the Government to the source and received its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto, as well as the observations by the source.

5. According to the source, the following persons have been unlawfully deprived of their liberty by the authorities of Myanmar:

Aye Tha Aung, a politician was reportedly arrested on 24 April 2000 at his residence by military intelligence personnel. It is believed he was given three consecutive seven-year prison terms for violating publications (sections 17 and 20 of the 1962 Printers and Publishers Act) and emergency (section 5 (j) of the 1950 Emergency Provisions Act) laws and possibly also in respect of section 17 (1) of the 1908 Unlawful Association Act. He was allegedly denied any legal defence. Further, he was allowed only one family visit between his arrest and sentencing.

Cin Shing Thang, a High Court advocate and a politician, was reportedly arrested in September 1998 at his residence by military intelligence personnel. He has not been given a trial at all and is currently being held in the Ye Mon military camp.

Do Htaung, a medical practitioner and a politician, was reportedly arrested on 21 May 1996 by military intelligence personnel under section 5 (j) of the 1950 Emergency Provisions Act. He is believed to be serving a seven-year sentence and is being held in Kalay Prison.

Duwa Zaw Aung was reportedly arrested in August 1999 by military intelligence personnel. It is believed he was given a term of seven years' imprisonment for his writing to religious leaders on political matters.

Khu Myint Tun, who graduated with a degree in Geology from Rangoon University in 1983, was reportedly arrested in May 1996 by military intelligence personnel, charged with disturbing State peace and stability and sentenced to seven years in jail under section 5 (j) of the 1950 Emergency Provisions Act. Later, he was sentenced to an additional three years' imprisonment for breaching the 1985 Video Act, because he had given a journalist from the Australian Broadcasting Corporation a video cassette of Aung San Suu Kyi's weekly speeches.

Kyin Thein, a politician with a degree in Geography, was arrested in 1996 by military intelligence personnel and was sentenced to seven years in prison under section 5 (j) of the 1950 Emergency Provisions Act.

Min Soe Lin, who has a medical degree from the Rangoon Institute of Medicine, was arrested on 6 November 1997 and was charged under section 5 (j) of the 1950 Emergency Provisions Act. In 1998, he was reportedly sentenced to seven years in prison.

Saw Naing Naing, who has a post-graduate diploma in Management and Administration from Rangoon University, was reportedly arrested on 13 September 2000 at his residence by military intelligence personnel. It is believed he was sentenced to 21 years' imprisonment under section 5 (j) of the 1950 Emergency Provisions Act, section 17 of the 1962 Printers and Publishers Registration Act and section 17 (1) of

the 1908 Unlawful Associations Act. He was held in incommunicado detention between the time of his arrest and his conviction in December 2000. It was said he was given a military trial, held in secret within Insein Prison. A previous detention of this person in 1990 was considered to be arbitrary by the Working Group (Opinion 38/1993).

Saw Mra Aung, a politician, was reportedly arrested in September 1998 and has been detained without charge. It is believed that the reason for his detention is that he, together with three other political leaders, asked the Government on 6 June 1998 to undertake a dialogue with democratic activists, for the sake of the country's future. He is being detained without charge and without trial, despite being 82 years old.

Saw Oo Rah, a politician, was allegedly arrested in December 1996 and charged with financially supporting the outlawed Karenni National Progressive Party (KNPP) and writing a book entitled "The crisis of Kayah State and causes of civil war in Burma". He was reportedly charged under the Association with Illegal Organizations Act, the 1962 Printing and Publishing Act and section 5 (j) of the 1950 Emergency Provisions Act. Later, he was sentenced to 17 years' imprisonment. It is said that he was not given any legal representation at his trial. He is reportedly suffering from serious diabetes and kidney problems.

Toe Po, a politician, was reportedly arrested in September 1998 in Rangoon because he met with some student activists. He was charged under section 5 (j) of the 1950 Emergency Provisions Act and sentenced to seven years' imprisonment.

6. The source alleges that section 5 (j) of the 1950 Emergency Provisions Act is too nebulous to be upheld as a valid criminal law and gives the prisoner no chance of receiving a fair trial. It is said that virtually any conduct could be found to fall within its vague provisions and that it is not clear what conduct is supposed to fall within the section.

7. It is also said that the 1962 Printers and Publishers Registration Act establishes machinery for blanket registration of anyone printing and publishing written material, and for State censorship of printed material, which is in contradiction to article 19 of the Universal Declaration of Human Rights. It is also pointed out that the Unlawful Associations Act is a 1908 statute, which predates the Universal Declaration of Human Rights.

8. Finally, it is alleged that these persons have not used or threatened or advocated the use of violence and that they have merely engaged in activities deriving from their freedom of expression, freedom of association and freedom to engage in peaceful political activity.

9. In its reply the Government confirms that out of the individuals referred to by the source, Aye Thar Aung, Do Htaung, Khun Myint Tun, Kyin Thein, Min Soe Lin, Saw Naing Naing, Saw Oo Rah and Toe Po are in detention, all of them serving a prison term to which they have been sentenced by courts. It also sets out the laws on the basis of which they were found guilty. Those laws are the same or similar to those mentioned by the source, namely the 1962 Printers and Publishers Registration Act and the 1950 Emergency Provisions Act.

10. In contrast, the Government asserts that the remaining persons referred to by the source have been released. It states that Duwa Zaw Aung, who was serving a 21-year prison term, was released on 13 August 2001 subsequent to the commutation and reduction of his sentence; Cin Shing Thang and Saw Mra Aung, who reportedly had been kept in a government guest house for questioning, are said to have been set free on 14 June 2001.

11. The Working Group forwarded the Government's reply to the source. The source confirmed that these three persons were in fact released, and added that, on 10 September 2001, a fourth detainee, Kyin Thein was also released.

12. The Working Group notes that as in the case of communications submitted to it in respect of alleged arbitrary detention of individuals involved in politics in Myanmar (see for example, Opinions No. 52/1992 and No. 38/1993), the law - most often the same section 5 (j) of the 1950 Emergency Provisions Act - is invoked against them because they have contested the political regime in power, without resorting to violence. From the information available to it, the Working Group is satisfied that the individuals referred to in the communication are detained solely for having peacefully exercised their rights to freedom of opinion and expression as guaranteed by article 19 of the Universal Declaration of Human Rights.

13. In the light of the foregoing, the Working Group expresses the following opinion:

(i) Since Duwa Zaw Aung, Cin Shing Thang, Saw Mra Aung and Kyin Thein have been released in the meantime, the Working Group decides, pursuant to paragraph 17 (a) of its methods of work, to file their case, without taking position as to whether their detention was arbitrary or not.

(ii) The detention of Aye Thar Aung, Do Htaung, Khu Myint Tun, Min Soe Lin, Saw Naing Naing, Saw Oo Rah and Toe Po is arbitrary, being in contravention of article 19 of the Universal Declaration on Human Rights, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

14. Consequent upon this opinion, the Working Group requests the Government of Myanmar to take the necessary steps to remedy the situation of the above-mentioned persons in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration on Human Rights. The Working Group encourages the Government to ratify the International Covenant on Civil and Political Rights.

15. The Working Group also decides to transmit this opinion to the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar.

Adopted on 12 September 2001

## OPINION No. 14/2001 (RUSSIAN FEDERATION)

Communication addressed to the Government on 4 July 2000

Concerning Igor Sutyagin

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolutions 1997/50 and 2000/36, and reconfirmed by resolution 2001/40. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.

2. The Working Group conveys its appreciation to the Government for having provided the requisite information in good time. The Government's reply was transmitted to the source, which sent its comments thereon to the Working Group.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. According to the source of the communication, Igor Sutyagin, a Russian citizen born in 1965 and a resident of Obninsk, was taken into custody on 27 October 1999 by agents of the Federal Security Bureau (FSB) of the Kaluga region. He is said to be accused of high treason pursuant to article 275 of the Criminal Code of the Russian Federation and could, if convicted and sentenced, face a 12- to 20-year prison sentence. No formal charges are said to have been brought against him until early July 2000. Allegedly, the arresting officers told his wife not to inform anyone of his arrest, including his parents.

5. According to the source, Mr. Sutyagin was initially held in pre-trial custody for a period of six months. This was subsequently extended by another three months, on the grounds that the investigation had not been completed. He is currently held in a special prison of the Russian

security agencies in the Moscow region, allegedly, in very harsh conditions. No one, allegedly, has been permitted to visit him in the past four months (at the time of writing, i.e. since the beginning of March 2000).

6. Igor Sutyagin is a graduate of Moscow State University. He joined the Institute for United States and Canadian Studies and obtained a doctorate in History. Subsequently, he was promoted to a position of senior researcher and made head of section in the Department of Military and Political Research. He is the author of several papers published in Russian and foreign academic journals; in 1998, he published a book entitled "Strategic nuclear arms in Russia".

7. According to the source, the FSB considers that by publishing a book about nuclear disarmament, Mr. Sutyagin disseminated "secret information". It is argued, however, that at no time did Mr. Sutyagin have access to classified information, a fact that was confirmed by the head of the Institute for American and Canadian Studies at Moscow University. As an acknowledged expert on arms control issues, Mr. Sutyagin had well-established relations with Russian academic circles, and it was in his capacity as a researcher that he exchanged information with a United States doctoral candidate at Princeton University on the subject of strategic nuclear weapons.

8. Also according to the source, in spite of FSB affirmations to the contrary, Mr. Sutyagin has never worked in any federal institution, nor has he worked for an intelligence service. The FSB initially reported that it had found classified military information during a search of Mr. Sutyagin's apartment, but no formal charge in this respect has been brought against him until now. The FSB further claimed that Mr. Sutyagin transmitted classified information on the design of a new generation of submarines on the occasion of a business trip abroad but, once again, no charge to this effect has been formulated and, according to the source, Mr. Sutyagin never had access to this type of information. Rather, it is contended, the arrest and detention of Mr. Sutyagin is part of a concerted drive, on the part of Russian security agencies, to obstruct the activities of Russian scientists and environmental activists who cooperate with foreign colleagues and academics.

9. In the light of the allegations formulated, the Working Group welcomes the cooperation of the Government.

10. In its reply, dated 20 November 2000, the Government of the Russian Federation explains that Igor Vyacheslavovich Sutyagin is a Russian citizen who was working as a head of section at the Russian Academy of Science's Institute of United States and Canadian Studies. He has been under investigation since 26 October 1999 in connection with criminal proceedings instituted by the Federal Security Service Authority for Kaluga oblast.

11. On 5 November 1999, he was formally charged with high treason, an offence under article 275 of the Criminal Code of the Russian Federation. Considering the seriousness of the offence, the procurator supervising the case authorized that Mr. Sutyagin should be held in custody in a normal remand prison in Kaluga oblast. A medical examination revealed no reason why he should not be detained in such a facility.

12. The accused currently has access to the case file, in accordance with the provisions of article 201 of the Code of Criminal Procedure of the Russian Soviet Federative Socialist Republic.

13. The investigation has been monitored by the Office of the Procurator-General of the Russian Federation since the commencement of the proceedings.

14. The allegations stated in the Working Group's enquiry have been looked into on several occasions pursuant to complaints lodged by the accused, Mr. Sutyagin, in the course of the investigation, and were found to have no basis in fact.

15. The investigating authorities are taking every step to ensure that all aspects of the case are examined thoroughly and objectively, in strict compliance with the laws of the Russian Federation and international human rights standards. Mr. Sutyagin has benefited from expert legal assistance provided by counsel of his choice from the very first day of his detention. There are no time limits on meetings between the accused and his counsel, and the accused is visited by his relatives once a month, as provided for by law.

16. The source, to which the Government reply was transmitted, has forwarded to the Working Group detailed and substantive information, inter alia the following:

(i) In response to the argument of the Government of the Russian Federation that "Mr. Sutyagin has benefited from expert legal assistance provided by counsel of his choice from the very first day of his detention", the source contends that Mr. Sutyagin was detained by the Federal Security Service (FSB) in the early morning of 27 October 1999. After that he was interrogated by FSB representatives in the FSB office in Obainsk for about 60 hours, until late at night on 29 October 1999. During that time Mr. Sutyagin was not allowed to consult a lawyer. Neither was he allowed to leave the FSB premises, although the FSB did not arrest him until late at night on 29 October 1999.

(ii) In response to the Governments argument that Mr. Sutyagin "is visited by his relatives once a month as provided for by law" the source specifies that, according to testimony which was brought to the attention of the Working Group on 6 May 2001, Mr. Sutyagin's relatives were repeatedly denied visits to Mr. Sutyagin during the investigation. As a result, Mr. Sutyagin was not allowed to see his relatives more often than once every two or three months, not once a month.

(iii) The Government's assertion that Mr. Sutyagin is being held "in an ordinary pre-trial detention centre in Kaluga District" is not in accordance with the facts. according to the source, insofar as he is currently held in a cell that is usually used as a punishment cell and was previously used as a cell for death-row inmates. The cell has no ventilation, no natural light (there is no window) and no adequate water supply.

(iv) Concerning the Government's response that "all aspects of the case are examined thoroughly and objectively in strict compliance with the law of the Russian Federation and international human rights standards", the source specifies that in violation of article 223 of the Russian Criminal Procedures Law that requires a court to grant a request to call additional witnesses unconditionally, the Kaluga court, which is hearing the case, refused to call a witness requested by Mr. Sutyagin's defence. Moreover, the source emphasizes, the trial is held behind closed doors and no information about the charges or the evidence (or rather, lack thereof) is available to the public. The trial is secret despite the fact, repeatedly admitted by the investigators, that Mr. Sutyagin has never had access to classified information. According to the public testimony of Mr. Sutyagin's lawyers, the investigation has failed to find any classified documents in Mr. Sutyagin's possession or to find any signs of his having access to any classified information. In spite of this, the trial is secret. According to the source, the closed character of the trial is one of the most serious obstacles to ensuring that Mr. Sutyagin's right to a fair trial is not infringed.

8. In the light of the foregoing, and especially of the observations of the source, the Working Group renders the following opinion:

Although Mr. Sutyagin's detention may, in some respects, not be in conformity with the provisions of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, these infringements of international rules are, on the basis of the information collected by the Working Group, not of such gravity as to confer on the deprivation of liberty an arbitrary character.

Adopted on 12 September 2001

## OPINION No. 15/2001 (AUSTRALIA)

Communication addressed to the Government on 18 May 2001

Concerning Mr. Marco Pasini Beltrán and Mr. Carlos Cabal Peniche, both of whom are Mexican nationals

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was extended and clarified by resolutions 1997/50 and 2000/36, and reconfirmed by resolution 2001/40. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group expresses its appreciation to the Government for having provided the information requested promptly and in full.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source, but to date the latter has not provided the Working Group with its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made, summarized below, and the response of the Government thereto.

5. Marco Pasini Beltrán, a 34-year-old married businessman, a Mexican citizen, was according to the source, taken into custody by the Australian Department of Immigration and Multicultural Affairs on 11 November 1998 in Melbourne, Victoria. On 27 November 1998,

he was arrested, pursuant to a provisional arrest warrant under the Extradition Act (Cth) 1988. On 20 January 1999, Mexico made a formal request for his extradition in respect of two alleged offences relating to the operation of a bank and one of concealment.

6. On 17 December 1999, a magistrate determined, pursuant to article 19 (9) of the Extradition Act 1988, that Mr. Pasini Beltrán was eligible for surrender to Mexico. By a warrant, the magistrate ordered that Mr. Pasini Beltrán should be committed either to the Melbourne Assessment Prison or to the Port Phillip Prison to await surrender to Mexico or release pursuant to an order under section 22 (5) of the Extradition Act. On 20 April 2000, the Federal Court of Australia dismissed Mr. Pasini Beltrán's bail application. According to the source, the Federal Court did not permit him to lead evidence which, in accordance with international human rights jurisprudence, showed that his rights were being contravened by his being kept with and in the same manner as convicted men.

8. On 19 June 2000, Mr. Pasini Beltrán filed an application with the Federal Court of Australia contending that his non-segregation from convicted men and non-separate treatment in Sirius East Prison were unlawful as they were in contravention of the Extradition Act 1988 and the International Covenant on Civil and Political Rights. The Federal Court dismissed the application on 14 July 2000. On 20 December 2000, Mr. Pasini Beltrán was granted bail by the Court because of his fragile psychological state. On 18 April 2001, he was returned to custody at the Port Phillip Prison, principally owing to the statutory limitations placed on the Court pursuant to the Extradition Act 1988. He is allegedly incarcerated as a maximum security prisoner together with and subject to the same conditions as the most hardened criminals.

9. Carlos Cabal Peniche, a 44-year-old businessman, a Mexican citizen, married for 20 years, with four children aged 9 to 16, was reportedly taken into custody by the Australian Department of Immigration and Multicultural Affairs on 11 November 1998 in Melbourne, Victoria. He was arrested pursuant to a provisional arrest warrant issued under the Extradition Act (Cth) 1988. On 31 December 1998, Mexico made a formal request for the extradition of Mr. Cabal Peniche in respect of a number of alleged offences relating to the operation of a bank and other offences relating to fraud, taxation and money-laundering.

10. On 17 December 1999, a magistrate determined, pursuant to article 19 (9) of the Extradition Act 1988, that Mr. Cabal Peniche was eligible for surrender to Mexico. By a warrant, the magistrate ordered that he should be committed to the Melbourne Assessment Prison or Port Phillip Prison to await surrender to Mexico or to be released pursuant to an order under section 22 (5) of the Act. On 20 April 2000, the Federal Court of Australia dismissed Mr. Cabal Peniche's bail application. According to the source, the Court did not permit him to lead evidence which, in accordance with international human rights jurisprudence, showed that his rights were being contravened by his being kept with and in the same manner as convicted men.

11. On 19 June 2000, Mr. Cabal Peniche filed an application with the Federal Court of Australia contending that his non-segregation and non-separate treatment in Sirius East Prison was unlawful as it was in contravention of the Extradition Act and the International Covenant on Civil and Political Rights. On 14 July 2000, the Federal Court dismissed the application, holding that Mr. Cabal Peniche was lawfully detained under the Extradition Act.

12. On 20 November 2000, Mr. Cabal Peniche sought again to be granted bail pursuant to article 21 (6) (f) (iv) of the Extradition Act 1988. On 20 December 2000, his application was dismissed.

13. In conclusion, it is said that both Mr. Pasini Beltrán and Mr. Cabal Peniche are being held as criminals. They are not convicted prisoners. However, they are incarcerated as, and together with and subject to the same treatment as, high-risk criminals. It was also said that, due to the current state of the Victorian prison system, they have no effective recourse to procedure to determine the conditions of their incarceration. There is no remedy available to the applicants whereby they can seek to ensure that the deprivation of their liberty is in accordance with international human rights standards.

14. According to the source, the two above-mentioned persons are the subject of extradition proceedings but are not guilty of any offence, either in Australia, in Mexico or anywhere else. The procedure by which their conditions of detention are determined is an internal, administrative or management procedure and they are deprived of the opportunity of questioning the grounds for their detention. This detention has now lasted two and one half years.

15. Lastly, it is said that their detention is arbitrary and is constituting a serious danger to their health and indeed their life. Their prolonged incarceration has had a serious adverse effect on their health, as attested by the finding of the Federal Court of Australia in December 2000 and expert reports from psychologists. In addition, several of the convicts with whom they are imprisoned are said to be suffering from serious and contagious diseases.

16. The source considers that, in the cases under consideration, several provisions of the international instruments relied upon by the Working Group in the examination of cases brought to its attention have been violated, in particular articles 5, 9 and 10 of the Universal Declaration of Human Rights and articles 7, 9 and 14 of the International Covenant on Civil and Political Rights.

17. In its reply dated 10 September 2001, the Government explained that besides the request from the Working Group on Arbitrary Detention, Australia also received a request from the Special Rapporteur on the question of torture for information in relation to the conditions of detention of Mr. Cabal and his brother-in-law Mr. Pasini, both Mexican citizens, who have been detained since November 1998 under section 12 of the Extradition Act 1988.

18. According to the Government of Australia, the length of detention of Mr. Cabal and Mr. Pasini was a result of their refusal to accept their eligibility for surrender to Mexico and their instigating legal proceedings to oppose this. It added that once the magistrate had found them eligible for surrender to Mexico, he was required under the Extradition Act 1988 to detain them unless there were "special circumstances".

19. As far as their detention in a maximum security unit as protected prisoners is concerned, the Government explains that Mr. Cabal and Mr. Pasini were initially detained in the "mainstream" prison community but, after threats to their safety, they were moved to a maximum security wing in August 1999. Their conditions of detention were the same as those of other protected prisoners.

20. Lastly, the Government reports that, on 2 August 2001, Mr. Cabal notified the Attorney-General's Department that he would be discounting his High Court appeal against the Federal Court decision upholding the magistrate's decision regarding his eligibility for surrender to Mexico and would not otherwise be opposing his extradition. It is proposed that Mr. Cabal will be surrendered to Mexico in September 2001. According to the Government, Mr. Pasini continues to oppose his extradition, but is not currently being detained.

21. The Working Group notes that the two communications contain allegations relating to:

(i) The legal aspects of the detention of the persons in question;

(ii) Their treatment in detention.

22. Since only the first category of allegations comes within its mandate, the Working Group has transmitted the allegations in the second category to the Special Rapporteur on the question of torture, before whom, moreover, the facts have already been brought, but it has not considered them, since they might relate to inhuman or degrading treatment.

23. With regard to the legal aspects of the detention, the Working Group notes that Mr. Pasini and Mr. Cabal are being held under an extradition procedure pursuant to a warrant and that, although it is undeniable that the length of their detention for the purposes of extradition is abnormally long, this is the result of the fact that they have availed themselves of all the guarantees to a fair trial provided for by law and have instituted all the proceedings for which Australian law provides in their situation, so that the length of their detention cannot be attributed to the Government of Australia.

24. Consequently, the Working Group is in a position to render the following opinion:

In the light of the foregoing, the Working Group declares that the detention of Mr. Pasini and Mr. Cabal is not arbitrary.

Adopted on 13 September 2001

**OPINION No. 16 /2001 (COLOMBIA)**

Communication addressed to the Government on 10 October 2000

Concerning Francisco Caraballo

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolution 1997/50 and 2000/36, and reconfirmed by resolution 2001/40. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group conveys its appreciation to the Government for having provided the requisite information in good time.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. According to the information submitted by the source, Francisco Caraballo, Commander of the Patriotic Liberation Army (EPL), First Secretary of the Marxist-Leninist Communist Party of Colombia and member of the Simón Bolívar Guerrilla Coordinating Group, was arrested on 22 June 1994 during a raid and search operation on an estate in the municipality of Cajicá, Cundinamarca, conducted by the Fourth Prosecutor's Office of the Special Unit with the assistance of the Administrative Department for National Security (DAS) and the Counter-Intelligence Battalion of the Colombian Army.

5. Once the inquiry had been initiated, a formal charge was laid against Mr. Caraballo for the offences of rebellion and terrorism on 29 June 1995. At the same time, the following charges were brought against him in his capacity as head of the rebel organization: a charge on 9 April 1996 for the kidnapping of Mr. Argelino Durán Quintero, with aggravating

circumstances; a charge for the kidnapping for ransom of Mrs. Beatriz Helena Turbay Pico, with aggravating circumstances; and a charge for aggravated kidnapping in a case in which the aggrieved party was an army officer Luis Demetrio Yépez. Dismissal of criminal proceedings against Mr. Caraballo was ordered in the case of the kidnapping of Juan José Chaux Mosquera and in the trial for terrorism of the leaders of the Workers' Trade Union (USO).

6. Consolidation of the various proceedings was ordered in accordance with the special jurisdiction procedure. The latest decision to bring charges was made enforceable on 16 May 1999. In accordance with the applicable regulation article 415, paragraph 5, of the Code of Criminal Procedure, amended by article 27 of Act No. 504 of 2000, this initiates a period of 12 months within which a public hearing must be held; failure to observe this deadline gives grounds for provisional release.

7. According to the source, case law and legal doctrine regard rebellion as a multiple, alternative and continuing offence, which subsumes all breaches committed by the rebels. In accordance with the regulation applicable to Mr. Caraballo's case - article 139 of the Penal Code of 1936, which was in force in 1967 when the EPL was founded - the offence of rebellion incurs a prison term of six months to four years, the suspension of civic rights and prohibition of public office for the same period and a fine of 500 to 5,000 pesos.

8. At the time of the submission of the communication to the Working Group, Francisco Caraballo had been held for 6 years and 2 months, and 16 months have passed without a public hearing since the last enforceable decision. Mr. Caraballo has already served the term of imprisonment imposed when he was sentenced for rebellion.

9. According to the information received, Mr. Caraballo's petition for conditional release was refused by the acting court, which considered that the punishment was envisaged to cover all the offences attributed to him; on these grounds its understanding was that Mr. Caraballo had not served the period of imprisonment he merited. With regard to the 12-month period within which the public hearing should take place, the court merely referred to the validity of this exceptional measure for proceedings in which a decision to bring charges has been made enforceable and the deadline for submitting pleas prior to sentencing had expired. Mr. Caraballo would have the right to conditional release on the grounds of expiry of the deadline, since 12 months had elapsed since the date on which the decision to bring charges had been made enforceable, without a public hearing having taken place.

10. In its reply, the Government stated that Mr. Francisco Caraballo, Commander of the EPL, was at the disposal of the Second Criminal Court of the Bogotá Specialized Circuit, for proceedings further to the charges brought by the Special Prosecutor attached to the Bogotá Sub-Unit on Terrorism.

11. Although the Government has not given a detailed reply regarding the legislation applicable in this case, it may be deduced from the information provided by the source that Mr. Francisco Caraballo has been detained under a legal order for the offences of rebellion and kidnapping, for which Mr. Caraballo has not denied responsibility, although he has stated that a number of kidnappings by his commandos were not authorized by him.

12. The source does not question the arbitrary nature of the detention ordered by the Prosecutor's Office, but does question the fact that Mr. Caraballo should have been released provisionally, pursuant to the amendment to the Code of Criminal Procedure which establishes that a delay in ensuring a hearing beyond the scheduled deadline provides grounds for granting provisional release.

13. Similarly, for there to be a possibility of provisional release being granted, the source maintains that the proceedings, which have been consolidated, should have been conducted for the offence of rebellion, which carries a maximum sentence of four years, although the court considers that the sentence should be for all the offences with which the accused has been charged.

14. In view of these different legal interpretations, the Working Group wrote to the Government and to the source on 11 June 2001 to request the following additional clarifications and details concerning the Colombian legal system:

(a) Francisco Caraballo is accused of having committed the offences of rebellion; kidnapping of two persons, with aggravating circumstances, and simple aggravated kidnapping of one person; and terrorism. The various proceedings against him have been consolidated.

(i) If he is found guilty, would the penalty, under the Colombian legal system, be the total of all the penalties corresponding to the various offences whose commission has been proved or only the harshest or longest penalty for the most serious offence?

(ii) It is stated that, according to article 139 of the 1936 Penal Code, which was in force in 1967 when the Patriotic Liberation Army (EPL) was founded, the offence of rebellion subsumes all the criminal offences which may be committed by the rebels. This offence attracts a penalty of six months' to four years' imprisonment, the suspension of civic rights and prohibition on holding public office for the same period, and a fine of 500 to 5,000 pesos. The Working Group wishes to know whether this means that Francisco Caraballo cannot be sentenced to a penalty of more than four years' imprisonment.

(b) It is reported that, according to article 415, paragraph 5, of the Code of Criminal Procedure, as amended by article 27 of Act No. 504 of 2000, failure to comply with the deadline by which a public hearing must be held is a ground for provisional release. The Working Group's question is whether this is true and whether, in such a case, the court is required, or simply authorized, to order the provisional release of the person concerned.

15. The Working Group stated that it wished to be informed:

(a) Whether, under article 26 of the 1980 Penal Code, persons found guilty of committing a combination of punishable acts are subject to cumulative penalties corresponding to all the various offences or only to the harshest penalty, established for the most serious offence;

(b) Whether the Penal Code or another Colombian legal provision states that the offence of rebellion subsumes all the offences which may be committed by the rebels;

(c) Whether the Colombian Code of Criminal Procedure actually provides that the accused is entitled to provisional release if more than six months have elapsed from the time of the enforcement of the decision to bring charges and the required public hearing has not been held.

16. Since neither the Government nor the source has provided additional information on these questions, although the Working Group has requested them to do so, the Working Group considers that it does not have sufficiently detailed information to render an opinion in the case under consideration.

17. In view of the foregoing and subject to the possibility of receiving relevant information and details at a later date, the Working Group believes that it cannot render an opinion on whether Mr. Francisco Caraballo's detention is arbitrary or not and decides, in accordance with paragraph 17 (d) of its methods of work, to file the case provisionally.

Adopted on 13 September 2001

**OPINION No. 17 / 2001 (PERU)**

Communication addressed to the Government on 14 June 2001

Concerning Elmer Salvador Gutiérrez Vásquez

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolutions 1997/50 and 2000/36 and reconfirmed by resolution 2001/40. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.

2. The Working Group regrets that the Government has not replied within the 90-day deadline.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. According to the source of the communication, Elmer Salvador Gutiérrez Vásquez, who is a Peruvian national, a physical education teacher and the former head of the Single Education Workers' Trade Union of Peru (SUTEP), has been in detention in the Miguel Castro Castro prison since 17 February 1995. He is a member of the "Movimiento Clasista Magisterial" (Teachers' Class Movement) and was accused of treason against the State and sentenced to the maximum penalty of life imprisonment.

5. According to the information received, he was tried by "faceless judges" in military courts. When he allegedly committed the offences of which he is accused, Decree Law No. 25475 of 12 May 1992, which characterizes treason as a separate form of the offence of

terrorism, was not yet in force. Even though the military judge disqualified himself for that reason and in accordance with the principle of the non-retroactivity of criminal law, the Special Supreme Military Court decided not to refer the case to the ordinary courts and to hear it itself.

6. According to the complainant, the case law of Peruvian courts has established that, in accordance with the principle of in dubio pro reo, accusatory evidence for the prosecution given by informants must be rejected if it does not have a fundamental link with other conclusive evidence.

7. According to the information received, the alleged accessories, who were charged with the same offence, namely, alleged membership of the "Movimiento Clasista Magisterial", were accused not of treason, but of terrorism, and were therefore tried by a special ordinary criminal court for cases of terrorism. In those proceedings, the court rejected the evidence given by informants and, on 23 August 1996, it acquitted and cleared the accused, Roberto Wilfredo Olaya Guerrero, Miguel Ángel Chumpitaz Soralliz and Uladislao Aristóteles Napoleón Reyes Montoya. The Supreme Court of the Republic upheld the acquittal.

8. It is also reported that, during the proceedings, the Special Supreme Military Court did not take the view that, during his imprisonment, Mr. Gutiérrez Vásquez was required to sign a statement under torture incriminating himself; that the court did not take account of the fact that the informants who had accused him, Elmer Acosta Bances and Roberto Palomino Quispe, withdrew their accusations twice and stated that they were put under pressure to accuse him by members of the National Department against Terrorism; and that he was convicted on the same day his lawyer gave his summation.

9. The source is of the opinion that different sentences were handed down by the ordinary courts and the military courts in connection with the same offences and the same evidence: acquittals in some cases and a conviction in the other, based on different charges, different characterizations of the same offences and different assessments of the same evidence. This is contrary to the principle of the unity of the jurisdiction of the courts and prejudicial to Mr. Gutiérrez Vásquez. The Supreme Court of Justice of the Republic acquitted his accessories and the highest military court convicted him.

10. In assessing whether Mr. Gutiérrez Vásquez was detained arbitrarily or not, the Working Group took account of the comments and observations it had made on some of the procedural rules applied by the military courts in the present case, particularly with regard to the administration of justice by "faceless judges", in military courts, in general, and in the Special Supreme Military Court, in particular; and with regard to the so-called offence of treason.

11. With regard to the first point, the Working Group stated: "the State must [of course] protect its judges so that they can act without fear of reprisals. However, the Group also believes that such an exceptional and disproportionate measure ... should be accompanied by adequate safeguards and controls in order to ensure a fair trial and to establish the responsibility of the judges. Otherwise, the requirements of article 14 of the International Covenant on Civil and

Political Rights would not be met, as stated by the Human Rights Committee in its preliminary observations (CCPR/C/79/Add.67), its concluding observations (CCPR/C/79/Add.72) and its views on the communication concerning Victor Polay Campos (No. 577/1994)" (E/CN.4/1999/63/Add.2, para. 68).

12. With regard to the second point (the crime of treason), the Working Group found, during its visit to Peru, that the extreme vagueness of the law has caused serious conflicts of jurisdiction, which have led to arbitrary detention. The Working Group has been notified of cases in which the accused was acquitted for an act defined in one way by the police, only to be convicted for the same offence defined differently. In the case of María Elena Loayza Tamayo, the Inter-American Court of Human Rights stated that this procedure is contrary to the principle non bis in idem (E/CN.4/1999/63/Add.2, para. 51).

13. The Working Group had already stressed in its earlier reports (E/CN.4/1993/24, para. 32; E/CN.4/1994/27, para. 63; and E/CN.4/1995/31, para. 51) that the vague definition of "treason" was one of the main causes of arbitrary detentions.

14. Noting that Mr. Gutiérrez Vásquez was prosecuted and convicted of the crime of "treason" at a time when the legislation allowing "faceless judges" to sit in military courts had not yet been repealed, the Working Group renders the following opinion:

> The deprivation of liberty of Mr. Elmer Salvador Gutiérrez Vásquez is arbitrary, being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

15. Having stated this opinion, the Working Group requests the Government to take the necessary steps to remedy the situation, in accordance with the standards and principles set forth in the Universal Declaration of Human Rights.

Adopted on 14 September 2001

## OPINION No. 18/2001 (MEXICO)

Communication addressed to the Government on 10 November 2000

Concerning Rodolfo Montiel Flores and Teodoro Cabrera García

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolution 1997/50 and 2000/36 and reconfirmed by resolution 2001/40. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.

2. The Working Group conveys its appreciation to the Government for having provided the requisite information in good time. The Government's reply was transmitted to the source, which transmitted its comments.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);

(ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. According to the source of the communication, on 2 May 1999, Rodolfo Montiel Flores and Teodoro Cabrera García, founder members of the Organización de Campesinos Ecologistas de la Sierra de Petatlán y Coyuca de Catalán, which was founded in 1998 in response to widespread and illegal logging in that region, were detained by members of the 40th Infantry Battalion of the Mexican Army in the village of Pizotla, municipality of Ajuchitlan del Progreso, state of Guerrero.

5. According to the source, Rodolfo Montiel Flores and Teodoro Cabrera García were held incommunicado for five days on army premises and were subsequently brought before the public prosecutor of Coyuca de Catalán, Guerrero, on charges of planting marijuana, carrying arms without a licence and carrying arms intended for the exclusive use of the army.

6. The source also reports that the accused did not have access to their lawyers, either at the initial inquiry stage or during the initial court proceedings. It is also alleged that they were subjected to torture in order to make them sign incriminating confessions. The National Human Rights Commission, in its recommendation No. 8/2000, concluded that Rodolfo Montiel Flores and Teodoro Cabrera García were not carrying arms at the time they were detained and that the evidence had probably been planted.

7. On 27 October 2000, the 21st single-magistrate circuit court, which heard the appeal against the judgement handed down on 28 August 2000 against Rodolfo Montiel Flores and Teodoro Cabrera García, upheld the conviction and the sentences of six years and eight months' imprisonment and of 10 years' imprisonment, respectively.

8. In its reply, dated 24 August 2001, the Government of Mexico explained that:

> Mr. Rodolfo Montiel and Mr. Teodoro Cabrera were sentenced on 28 August 2000 by the Fifth District Court in case No. 61/99, having been found guilty of criminal offences against health by planting marijuana and carrying firearms intended for the exclusive use of the army, navy and air force. Rodolfo Montiel Flores was therefore sentenced to six years and eight months' imprisonment and Teodoro Cabrera García to 10 years' imprisonment. The judgement was subsequently upheld on appeal by the competent court on 26 October 2000.
>
> On 22 March 2001, counsel for the defence lodged a direct application for amparo (117/2001) against the judgement.
>
> On 9 May, the collegiate circuit court granted the applicants amparo and the protection of federal justice, to make it possible for a certificate issued by two forensic physicians belonging to the international organization Physicians for Human Rights to be admitted in evidence.
>
> Defence counsel for Mr. Montiel and Mr. Cabrera accordingly made submissions supporting the legal validity of the certificate, in order to have it considered by the judge hearing the case as evidence that the individuals in question had been subjected to torture.
>
> The district judge has received the case file and a decision is awaited.

9. The source, to whom the Government's reply was transmitted, has communicated to the Working Group a number of comments and clarifications, based in particular on the following three documents relating to the proceedings: two medical certificates, an opinion in the form of a recommendation by the National Human Rights Commission of Mexico, and an application for amparo.

(a) Medical certificates. Two medical certificates (copies of which have been transmitted to the Working Group) were issued following an examination carried out in the prison itself - and hence with the consent of the authorities - by two forensic physicians (one Danish and the other Argentine) belonging to the international organization Physicians for Human Rights, whose authority in the area of forensic medicine is recognized (see references in

the file). This point, moreover, is not contested by the Government in its reply. In their submissions, the forensic experts note that the physical examination corroborates the two ecologists' statements with regard to when the torture was applied and the methods used;

(b) Mexican National Human Rights Commission recommendation No. 8/2000. The Commission states, inter alia that its recommendation is prompted by the violation of several constitutional provisions committed during the military operation, in particular against the two individuals detained ("After having brought the situation under control, the army personnel carried out an operation likely to ... expose the detainees to various acts violating their fundamental rights"). Following investigations by representatives of the Commission at the actual scene of the operation and interviews in prison with the two ecologists, the Commission concluded that, at the time of their arrest, the individuals concerned were not carrying arms (recommendation No. 8/2000, p. 9, para. (iii) (3)) and that "the acts of torture being investigated by an official of the Military Public Prosecutor's Office for Military Zone 35, as part of preliminary inquiry No. 35ZM/06/99, and concerning which, as of the date of issue of this recommendation, no statement has been made, did indeed take place" (ibid., p. 10, c);

(c) Application for amparo. The judge hearing the case considered that, in view of the credibility of the certificate issued by the above-mentioned two physicians, sufficient evidence existed to support the allegations that the two ecologists had been subjected to torture.

10. In the light of this specific and consistent evidence, the Working Group considers that the allegations made by the source are sufficiently substantiated, bearing in mind its decision No. 38/1994, paragraph 18 (see E/CN.4/1996/40/Add.1), in which it considered that the fact that a detention had been ordered on the basis of evidence obtained from a confession extracted under torture conferred on it an arbitrary character, having regard to the international standards which prohibit the practice of torture under any circumstances, but specifically in the light of those provisions which either explicitly refer to the inadmissibility of evidence obtained under torture or, with a view to preventing torture imply that no one should be compelled to testify against himself or to confess guilt, namely:

(a) Article 14.3 (g) of the International Covenant on Civil and Political Rights: "In the determination of any criminal charge against him, everyone shall be entitled ... Not to be compelled to testify against himself or to confess guilt";

(b) Principle 21.1 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which refers to the case in which an authority takes undue advantage of the situation of a detained person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person;

(c) Article 15 of the Convention against Torture, under which "Each State party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made";

(d) Guideline 16 of the Guidelines on the Role of Prosecutors (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Havana, Cuba, from 27 August to 7 September 1990), which states: "When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice";

(e) The Human Rights Committee's consistent case law, which states that no one shall be compelled to testify against himself or to confess guilt (Communication No. 74/1980, Miguel Angel Estrella v. Uruguay, 17 July 1980), or to sign a statement incriminating himself (Communication No. 52/1979, Delia Saldias de López v. Uruguay, 6 June 1979);

(f) Above all, the Human Rights Committee's General Comment No. 20 (1992) on article 7 of the Covenant, which states: "It is important for the discouragement of violations under article 7 that the law must prohibit the use or admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment" (see HRI/GEN/1/Rev.3).

11. In the light of the above, the Working Group renders the following opinion:

> The Working Group finds that there are reasonable and consistent grounds for concluding that the detention of Mr. Montiel and Mr. Cabrera was ordered in flagrant violation of article 5 of the Universal Declaration of Human Rights, articles 7 and 14 (g) of the International Covenant on Civil and Political Rights, and article 15 of the Convention against Torture, to which Mexico is a party. The Working Group considers that these violations are of such gravity as to confer on the detention an arbitrary character, falling within category III of the principles applicable in the consideration of cases submitted to the Working Group.

12. Consequent upon the decision of the Working Group declaring the detention to be arbitrary, the Working Group requests the Government of Mexico to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights, as well as in article 15 of the Convention against Torture, in particular by taking measures to punish the authors of the violations and towards the release of these two persons from prison by discontinuing the proceedings against them.

Adopted on 14 September 2001

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